

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN, et al. \*  
\*  
V \*  
\*  
DAIRY FARMERS OF AMERICA, \*  
INC., et al. \* CIVIL FILE NO. 09-230

FAIRNESS HEARING  
Thursday, January 29, 2015  
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA R. REISS  
Chief District Judge

APPEARANCES:

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1           THURSDAY, JANUARY 29, 2015

2           (The following was held in open court at 9:37 a.m.)

3           THE CLERK: Your Honor, the matter before the  
4 Court is civil case number 9-230, Alice Allen, et al.,  
5 versus the Dairy Farmers of America, et al.

6           Representing the plaintiffs are attorneys Kit Pierson,  
7 Emmy Levens, and Robert Abrams. Representing the  
8 defendants are attorneys Steven Kuney, Carl Metz, and  
9 Ian Carleton. And we are here for a fairness hearing.

10          THE COURT: Good morning.

11          MR. PIERSON: Morning, your Honor.

12          MR. KUNEY: Morning, your Honor.

13          THE COURT: As a housekeeping matter, I am  
14 going to deny as moot without prejudice to renew all  
15 pending motions *in limine* if we -- for both sides. If  
16 we have a trial, you can refile them, and I may decide  
17 to winnow down the number of them, but they have been on  
18 our docket forever, and if we have a trial, it's not  
19 going to be this month or next month, in any event.

20          I am planning on hearing from class members first.  
21 I have already read everything that class members have  
22 submitted. I have read the attorneys' papers. I do  
23 have questions for the attorneys, but this is really a  
24 hearing in which we hear from the class and the class  
25 representatives, if they want to, about whether they

1 agree with the settlement, oppose the settlement, have  
2 some thoughts that they want to convey to the Court  
3 about whether the settlement is fair, reasonable, and  
4 adequate. And in granting preliminary approval, that  
5 does not mean the settlement is approved. That's how we  
6 get to a fairness hearing, and hear from the class.

7 So what I am going to ask is that you come forward  
8 if you want to speak, you identify yourself for the  
9 court reporter and spell your name. She's going to be  
10 taking down everything that you say, both with her  
11 machine but also with an audio recording. And keep in  
12 mind that she -- it's hard to keep up with people  
13 speaking. I speak notoriously fast, and she is probably  
14 one of our best court reporters in the state of Vermont.  
15 So slow down when you speak, and we will try to get  
16 everything that you want to say.

17 If we have time left over, we will talk to the  
18 attorneys about their thoughts about settlement, but I  
19 have read their submissions.

20 So let me ask if there are any class members or  
21 class representatives who want to speak. I have a list  
22 of people who have notified us, but if you are not on  
23 the list, I plan on being flexible about that. And  
24 right now the list consists of Bill Rowell, Paul  
25 Burbeau, Reg Chaput, Larry Bailey, Richard Swantak,

1       Garret Sitts, Ralph Sitts, Jonathan and Claudia Haar,  
2       and Ken Dibbell.

3           So why don't we start with -- I will get you  
4       started. How about Jonathan and Claudia Haar, because  
5       they are class representatives as well as class members?

6           JONATHAN HAAR: Excuse me.

7           THE COURT: So come on up, and you are going  
8       to come to the podium if you are ready.

9           JONATHAN HAAR: Thank you, your Honor.

10          I was going to ask if -- thank you, your Honor.

11          I was going to ask if we could have Joshua Haar  
12       speak first, if that would be possible.

13           THE COURT: Sure. Absolutely. I had to pick  
14       somebody out of the class, and your name came up, so  
15       that's fine.

16           JONATHAN HAAR: Well, thank you.

17           JOSHUA HAAR: All right. Thank you very  
18       much for the opportunity to address the Court. Joshua  
19       Haar. Last name -- well, you folks have that last name  
20       down very well, I'm sure.

21           THE COURT: It's H-a-a-r, so we have to do it  
22       for the court reporter.

23           JOSHUA HAAR: That's correct. Yes. Yes.

24          I'd like to address the Court today regarding the  
25       injunctive relief. I believe for the farmers, both in

1 support of the settlement and against the settlement,  
2 that injunctive relief has been at the center of the  
3 issues that they have sought. I wanted to take a look  
4 at the specific provisions laid out in the settlement  
5 here. So I guess I will just start right into it.

6 The settling defendants, during the term of this  
7 agreement, aren't going to enter into any full-supply  
8 agreements, but the existing full-supply agreements are  
9 untouched. This lawsuit was not brought on the basis of  
10 full-supply agreements which defendants might bring into  
11 existence at some future date, but rather for the ones  
12 which are currently strangling the market. The fact  
13 that this term here does nothing to touch those means  
14 that it is not going to result in any market change.

15 The next one, that any agreements for the supply or  
16 sale of raw Grade A milk to customers will be brought  
17 before the DFA board of directors, or the DMS board of  
18 directors, depending on which entity is creating  
19 those -- oh, incidentally, they have the same address  
20 and the same bank account number. There's -- there's a  
21 great consolidation of power there.

22 But I actually went to look at the DFA board of  
23 directors on their website, because I noticed further on  
24 in the injunctive relief there's a requirement that DFA  
25 will disclose the identity of their board of directors.

1       They already do so. A quick look at the website would  
2       have resolved that.

3                  What is not on their website, and which actually --  
4       I've taken a look at the Dean Foods website, just as an  
5       example of a similar -- similar corporate body. Things  
6       like principles, director responsibilities, board  
7       leadership structure, director qualifications, voting  
8       for directors, committees and compensation, these things  
9       are not addressed in the injunctive relief.

10                 And additionally, and perhaps the main point on  
11       bringing these agreements before the board of directors,  
12       because our counsel negotiated away third-party vote  
13       counting from us, we have little or no means of  
14       influencing the board of directors, as members. So  
15       these two provisions are not going to result in any  
16       market change.

17                 Moving to the next -- the next page of the  
18       settlement: The settling defendants agree that they  
19       will, upon written request by any of their respective  
20       members located in Order 1, disclose to that member  
21       summary of the terms of any of their agreements for the  
22       supply or sale of raw milk. This disclosure needs only  
23       to state whether it's a full-supply agreement, the  
24       duration, and any other material provision, provided  
25       this disclosure is permitted by the terms of the said

1 agreement.

2 Currently, if DFA, DMS wants to hide something,  
3 they put in a clause and hide it. After this agreement,  
4 if they want to hide something, they hide it. This does  
5 not result in any change whatsoever.

6 We'll try (d). Settling defendants agree that any  
7 cooperative member, affiliate, or associate of DFA, DMS  
8 in Order 1 may, during the term of this agreement,  
9 terminate its relationship with DFA or DMS upon no more  
10 than 90 days without -- written notice without penalty.

11 This -- this is impossible for a cooperative member  
12 to do. If they leave DFA, DMS, they know very well that  
13 upon completion of the settlement term, they're out of  
14 business. The only way to get the processors is by  
15 going through DFA, DMS.

16 Looking down at the next section, we have the  
17 disclosure that Settling defendants agree not to oppose  
18 the request of subclass counsel to unseal and release  
19 materials, including briefs and documents, regarding  
20 plaintiffs' motion for certification subclasses and  
21 defendants' motion for summary judgment.

22 This only touches a tiny portion of the docket.  
23 And worse, back in section 6, we were told all claims  
24 that were asserted or that could have been asserted as  
25 part of this litigation are released. So it does no

1       good for us farmers to know about these things if we  
2       can't do anything about them.

3           There are other terms which involve DFA's internal  
4       considerations, things like having the Northeast Area  
5       Council look over our milk checks or the delegate  
6       election process. But to ask DFA to consider activities  
7       and policies which it has already considered, it has  
8       already established, and it has already maintained is  
9       pointless. This will not result in any change.

10          We are told that their financial reports need to be  
11       prepared in accordance with GAAP, general accounting --  
12       accepted accounting principles, and audited by a  
13       national accepted accounting firm. In fact, they  
14       already are. We have here a report from Ernst & Young,  
15       DFA's 2012 audit.

16          But the point which I would like to address  
17       regarding this requirement is that essentially they're  
18       trying to weld a wooden hay wagon. You can't fix an  
19       antitrust violation with an audit of financial  
20       statements. In fact, I'm sure you are familiar with the  
21       audit opinion, but I would like to read a couple  
22       sentences to emphasize this point: "These financial  
23       statements are the responsibility of the company's  
24       management. Our responsibility is to express an opinion  
25       on these financial statements based on our audits. We

1       were not engaged to perform an audit of the company's  
2       internal control over financial reporting. Our audits  
3       included consideration of internal control as a basis  
4       for designing audit procedures appropriate, not for the  
5       purpose of expressing an opinion on the effectiveness of  
6       the company's internal control or financial reporting.  
7       Accordingly, we express no such opinion."

8              Because -- because this internal control provision  
9       is not currently done and was left out of the injunctive  
10      relief, much of this audit oversight is left out.  
11      Internal control is key to a company, and DFA has very  
12      little of that.

13             I also noticed here down under (g)(iii), DFA board  
14      members and senior executive management will continue to  
15      execute annual conflict of interest certifications,  
16      which are subject to review by DFA's own audit  
17      committee. Essentially, the fox is promising not to  
18      raid the chicken coop again.

19             But the problem is not the conflict of the board  
20      members and directors per se. It's the conflict of the  
21      organization which they are working for. DFA both  
22      processes and produces milk. It's selling to itself and  
23      creating -- that's where the conflict of interest is.  
24      They waffle -- the material cost of their processors to  
25      be lowest so that they can make as much profit as

1       possible upon that end. That's the conflict of  
2       interest. It's not the individual members per se.

3           So with regard to cooperative change, to -- as I  
4       said, but I really wanted to emphasize, to require DFA  
5       to consider changing these practices, which it has  
6       already considered, maintained, and adopted, is  
7       pointless.

8           This has been demonstrated by a lack of change  
9       following the Southeast settlement. Now in the  
10      Southeast, if you want to attend the Southeast area  
11      council meeting, you need written permission, and you  
12      may stay for only as long as required for you to speak.

13           We were speaking to a few of the Southeast farmers  
14      about the organizational changes following their  
15      settlement there, and one farmer was telling us about  
16      this -- one of -- this change in the Southeast  
17      farmer who ran for a Southeast area council seat and was  
18      elected. But after a little convincing by DFA, DMS, the  
19      seat was filled not with the farmer who had won -- he  
20      decided to drop out -- but the incumbent. And then the  
21      term changed from two years to three years.

22           This is -- this is not -- these release are not a  
23      grant of significant economic relief going forward.  
24      This -- this is nothing. Our concessions are -- under  
25      the release are legally binding. DFA's are not. This

1       is not equitable.

2           And worse, the lack of meaningful market relief  
3       invalidates whatever monetary relief there is. PI count  
4       spikes, which our milk inspectors tell us are  
5       unexplainable, and which are widely experienced unless  
6       you are a delegate, are a prime example.

7           Over our objections, counsel negotiated away our  
8       request for independent milk testing. Consequently,  
9       DFA, DMS can easily recover their monetary relief by  
10      adjusting milk fees to reduce the amounts they pay out  
11      in quality premiums. In 2013, DFA alone, not DMS,  
12      marketed 60.6 billion pounds of milk. \$50 million  
13      amounts to 8 cents per hundredweight of that.

14           Now, over the past several months, us, Richard  
15       Swantak and, to the best my knowledge, other DFA members  
16       in the area have lost 50 cents of premium -- per  
17       hundredweight of premiums, not 8, as a result of new  
18       balancing fees which supposedly occurred because there  
19       was too much milk in the order.

20           We have no -- we have no way of verifying that, as  
21       farmers, especially since -- my father might just have  
22       wanted to touch on this point, but we live five miles up  
23       the road from the Chobani milk plant, and while there  
24       was this oversurplus of milk, he couldn't -- he couldn't  
25       get enough milk to keep his -- his plant at full

1       capacity. It's -- it's not a good situation from our  
2 point.

3           And because of this situation, Rick Smith was able  
4 to state, in his July member update, that, speaking of  
5 the settlement, this will not affect our operations in  
6 the least. Taken at their own words, defendants are  
7 giving up nothing.

8           Now, what the class is giving up: Any reasonable  
9 settlement is by nature a compromise, plus the fact that  
10 we must sacrifice some of our interests is a given. The  
11 reason this settlement stands out as unfair and  
12 unreasonable is that it sacrifices all of our interests.

13           First, it sacrifices the class's case. This is a  
14 valuable asset to us because it has the potential to  
15 recover some of what has been stolen from the class and  
16 to bring an end to the illegal conduct which  
17 countenances that.

18           We understand that the best-case potential monetary  
19 recovery is a billion, 50 million dollars, treble  
20 damages, and the -- the future nonmonetary value of  
21 injunctive relief and fixing the industry problems which  
22 caused this case is incalculable.

23           To surrender that at the eve of trial is a great  
24 concession on our part. To surrender it for, as we have  
25 seen, nothing is hardly short of unconscionable

1 procedurally, because we have no bargaining power  
2 against our class counsel, and substantively, because of  
3 the one-sided terms.

4 In exchange for these terms, which include a  
5 release which extends beyond both the time period and  
6 the subject matter of the claim, this class is not  
7 granted anything meaningful. DFA can continue its  
8 current full-supply agreements, patiently waiting until  
9 the conclusion of the settlement period to punish any  
10 farmers or cooperatives which dare to leave the fold,  
11 and review its internal affairs to conclude that the  
12 cooperative house already in perfect order. Again, our  
13 concessions are binding; defendants' are not. That's  
14 not equitable.

15 Second, it sacrifices our recovery. This class was  
16 ready to proceed to trial, seeking potential treble  
17 damages, seeking over a billion dollars, best case.  
18 Under the settlement, we are left with the value of one  
19 tractor tire as compensation for 22-plus years of market  
20 oppression. True class action recovery on a class  
21 member basis is typically somewhat small, but in this  
22 case, we have a benchmark involving the same defendants  
23 and the same conduct.

24 In the Southeast case, total recovery per farm,  
25 before attorneys' fees, amounted to roughly \$50,000. In

1       the Northeast case, total recovery per farm, again,  
2       before attorneys' fees, if the settlement goes through,  
3       will be \$6,666.

4             Applying this measure of counsel's effectiveness,  
5       their percentage of recovery will be 4.4 percent, which  
6       is actually strikingly similar to the result in  
7       Goldberger versus Integrated Resources. I don't know  
8       how -- I'm sure the Court must have worked with this  
9       case before. If I could provide the citation for that,  
10      it would be appreciated.

11           Because I noticed two things in the Goldberger  
12      opinion. One thing which the court looked at was that a  
13      lot of the work, which the attorneys were -- had  
14      submitted in connection with the case, had already been  
15      done for them.

16           In this case, the efforts of how they were in the  
17      Southeast were benefited from by both Cohen Milstein and  
18      BakerHostetler in the Northeast case, in addition to the  
19      federal prosecutor work in 2004, with the investigation  
20      back then.

21           And another thing was that the Goldberger court  
22      found, because the likelihood of -- the likelihood of  
23      nonpayment was slim, most of the defendants were  
24      solvent, well-established individual entities, that did  
25      not justify -- and, again, this is under -- upheld by

1       the Second Circuit Court of Appeals -- that did not  
2       justify an increase in the attorneys' recovery.

3           But my point in this is that they would never  
4       settle for a slap in the face of 4.4 percent, and  
5       neither should the class be forced to.

6           Now, in addition to these facts, I would like to  
7       bring the legal standard to bear. In evaluating the  
8       settlement, I understand that the complexity of the  
9       expense and the likely duration of this case is  
10      something the Court must consider.

11          I do not dispute this is a complex case. The point  
12       that I wish to emphasize is that much of this complexity  
13       is in the past, not the future. We are not facing the  
14       hurdles of establishing a claim, dismissal, discovery,  
15       summary judgment. We are at the eve of trial.

16          It's not fair for us to give up our established  
17       damage model, 341 million, for no injunctive relief, and  
18       50 million, which, as I explained, DFA will recover that  
19       at the drop of the hat.

20          And I'd also like to speak about -- as to the  
21       reaction of the class. There's two things I would like  
22       to emphasize.

23          First of all, I would like to bring to the Court's  
24       attention the fact that the more massive a farm is, the  
25       more milk it ships with DFA or a co-conspirator plant,

1       the higher incentive it has to come down on DFA's side  
2       of this settlement.

3                  One of our neighbors milking 2500 cows told us that  
4       he could not afford to risk opposing this because he  
5       needed a market for his milk. If a friend among the  
6       higher-ups tells you you might want to send in a letter  
7       in support, you have a very strong incentive to do so.  
8       In fact, many of the letters in support, which I already  
9       expressed, just -- that the writer was not familiar with  
10      the particulars of the case, they just wanted it  
11      settled.

12                 The second thing I wanted to bring up is that many  
13      of the farmers who express support for the settlement  
14      express concerns which were very similar to ours at the  
15      beginning of the case. We wanted -- we don't want the  
16      attorneys to take advantage of this process, and we  
17      wanted fundamental market change.

18                 People are under the impression that the settlement  
19      will provide fundamental market change, are less likely  
20      to support it for the right reasons. But the fact is it  
21      doesn't. None of these provisions will change the  
22      market conditions, which we complained about initially  
23      and which claim has withstood the hurdles of dismissal,  
24      discovery, and summary judgment. My point is that if  
25      many of these farmers were acquainted with the facts as

1       we are, they would be on our side of the room.

2           And I understand the risk going forward is a very  
3       great consideration. And after discovery, we were ready  
4       to proceed with the -- seeking the \$340 million in  
5       damages. The council claimed that 130 million of this  
6       is most likely unrecoverable because it falls outside  
7       the statute of limitations. And our pleadings do not  
8       include a fraudulent concealment claim to overcome that  
9       statute.

10          And I may be a mere law student, but my immediate  
11       thought when I heard that was Rule 15(b). Pleadings  
12       are -- a liberal amendment of pleadings is allowed to  
13       aid in the decision on the merits. But at any rate, the  
14       Court specifically allowed the class to bring this  
15       fraudulent concealment claim at trial in the motion for  
16       summary judgment, and I'd like to point out that, in the  
17       situation where one party acts as a fiduciary of  
18       another, fraudulent concealment is most easy to  
19       establish.

20          All that requires, under strict liability, is that  
21       the -- the fiduciary acted other than in the best  
22       interests of the party represented. That's easy to  
23       establish for us because DFA and DMS does that every day  
24       by, number one, processing milk; number two, by owning  
25       import licenses. They're trying to sell our milk. Why

1       would they have import licenses to bring other milk in?

2           So I would ask the Court to please question  
3       counsel's hastiness to discount that portion of our  
4       damages. And the same applies to their hasty  
5       consideration of the settlement in light of the best  
6       possible recovery or, more accurately, in terms of the  
7       darkness of the intended risk. Only as an afterthought  
8       do they mention the -- our best possible recovery in  
9       terms of injunctive relief. That starts with the money,  
10      and that's where it stays.

11           I have brought up a couple things which, from  
12      discussions with my parents and the class  
13      representatives and other folks, I think this is our  
14      best possible recovery. Because DFA acts other than for  
15      the best -- best possible -- best interests of its  
16      fiduciaries, it doesn't count as a cooperative for  
17      purposes of Capper-Volstead Act. Therefore, it should  
18      be held liable for nonsolicitation agreements and  
19      sole-supply agreements. As we can establish, the value  
20      of that is a billion dollars in treble damages.

21           Aside from that, the injunctive relief of agreeing  
22      under penalty to provide for third-party voting, vote  
23      counting, and third-party milk testing will solve a lot  
24      of the problems which we farmers face. These things  
25      which, if our counsel -- if our counsel had worked with

1       us and listened to us, these are the things which would  
2       be on the table now, and we wouldn't be talking about  
3       nonexistent injunctive relief.

4                 The conspicuous absence of this, the entire  
5       positive half of the spectrum -- you see, my  
6       understanding is that we try to look at the best  
7       possible recovery for the class and the worst possible  
8       recovery, and then we have a spectrum upon which to  
9       evaluate how reasonable the settlement is. The  
10      conspicuous absence of the entire half of that spectrum  
11      casts a lot of doubt on counsel's assertion that they  
12      exercised professional judgment.

13                 It seems to me that rather than arguing this  
14       settlement is fair, reasonable, and adequate, they  
15       argued, "We need this settlement; therefore, it's fair,  
16       reasonable, and adequate." And a mixup like that is  
17       something you lose major points for on law school exams,  
18       and it's our prayer that this would not be rewarded in  
19       practice.

20                 I also want to speak about the fact that when the  
21       notice initially went out in December regarding the  
22       settlement, it had the wrong phone number. Farmers were  
23       sent through a runaround before they even started.

24                 And given that fact, and the fact that we had  
25       Christmas and New Year's right up there plus our full

1 daily schedule, the fact that 500 claims were still  
2 filed is a testament not to the skill of the American  
3 lawyer but to the perseverance of the American farmer.

4 You see, your Honor, I have to agree with my  
5 brother that when it comes for knowing what's best for  
6 the farmers, these attorneys are potatoes in a corn  
7 crib. It -- from the class perspective, we have no risk  
8 going forward because this settlement leaves us with  
9 nothing left to risk.

10 The monetary payment is -- as I said, it's a  
11 tractor tire for 22 years of market oppression, and the  
12 injunctive relief, the key thing which we were looking  
13 to get out of this lawsuit, which -- farmers against  
14 this settlement and for this settlement, that's what  
15 they are looking for -- it's not going to result in any  
16 change for us.

17 DFA has already clearly violated the law here, and  
18 we need to hold them accountable for that. In January  
19 2000, there were 18,000 farms in this Northeast order.  
20 Today there's 12. I don't dispute that defendants and  
21 those closest to them were quite literally making out  
22 like bandits, but this industry and the lives and  
23 communities it represents is in serious trouble.

24 Defendants and class counsel do not share these  
25 risks and consequently have a joint interest opposed to

1       ours, yet this class could and still can get meaningful  
2       relief, and we ask that our attorneys will not be  
3       allowed to sell this out on us.

4           In order to discard the settlement and achieve  
5       genuine fair, reasonable, and adequate relief for the  
6       class, our only hope is your position as its guardian  
7       and fiduciary.

8           And I want to thank you very much for the time and  
9       the great honor of speaking on this issue.

10           THE COURT: Thank you.

11           Who else would like to speak?

12           Okay. Come on forward.

13           If you would please begin by stating and spelling  
14       your name.

15           RALPH SITTS: Your Honor, my name is Ralph  
16       Sitts; R-a-l-p-h, S-i-t-t-s.

17           THE COURT: Mr. Sitts is a class  
18       representative.

19           RALPH SITTS: Excuse me?

20           THE COURT: You are a class representative.

21           RALPH SITTS: Yes, I am.

22           Okay. Thank you, your Honor, for this opportunity.

23           I have been a lead plaintiff from the beginning. I  
24       have six grandsons who we hope some of whom would carry  
25       on the family farm to make five generations in dairying.

1 I take my responsibilities to my family and my dairy  
2 farming seriously. As you can see, I have a vested  
3 interest.

4 A quick history, in my opinion, on how the dairy  
5 farming industry got to where it is today:

6 At the very first, a few dairy neighbors got  
7 together to form a bargaining co-op to market their  
8 milk. With the addition of other producers in this  
9 co-op, it became more difficult for dairy farmers to  
10 find a time to manage its everyday operations. Hence,  
11 managers were hired, ultimately a CEO.

12 Some co-ops moved into petroleum sales, building  
13 material sales, insurance, baking, et cetera, all from  
14 the revenues generated from milk sales. This is where  
15 dairymen, in my opinion, who were members of the co-op,  
16 should have demanded this money, instead of being  
17 invested in these ventures, be returned to the dairy  
18 farmers.

19 The basic rule of thumb in retail is to buy cheap  
20 and sell high. In this case, hold down the price of the  
21 raw material milk and this would increase profits at the  
22 retail end. These CEOs knew this, and where it failed  
23 was that the co-ops did not return the profits back to  
24 the dairymen. The CEOs and the boards made profits for  
25 the co-ops, but they did not return these profits in the

1 milk checks to the farmers.

2 In the Dean settlement which was consummated during  
3 the holiday season, we were coerced into an agreement.  
4 We were discouraged from interaction among plaintiffs.  
5 The old adage of divide and conquer applies.

6 In the Dean settlement, we were told the settlement  
7 on the table is our only option, a one-time deal that  
8 must be agreed to immediately. If we consent to this  
9 settlement, it will send a favorable precedent in the  
10 DFA case, which will be for more injunctive reliefs and  
11 for hundreds of millions of dollars.

12 To help with certification of the class, we must  
13 sign now. All this, despite the discovery process had  
14 yet to be completed. On a conference call, we were told  
15 by our counsel that there were -- should be no  
16 interaction between plaintiffs in regards to this case  
17 without attorneys present, insinuating we could face  
18 possible legal action.

19 In February, on Thursday, December -- or I'm sorry.

20 In fact, on Thursday, December 23rd, 2010, the day  
21 the Dean settlement was filed, our counsel -- our  
22 counsel contacted us individually, Ralph and Garret  
23 Sitts on one line with one lawyer, and Alice Allen on  
24 another line with another lawyer. Prior to this, any  
25 settlement discussions were handled as a group

1 conference call. We were unable to hear what was being  
2 said to or being said by Alice Allen, the other lead  
3 plaintiff.

4 On this call, after a lengthy and heated discussion  
5 with counsel, it became obvious to us that our counsel  
6 was not going to honor our settlement points and the  
7 settlement was a done deal. This was totally unfair to  
8 the class. We felt that we, the class rep, should stand  
9 our ground in the face of this coercion, but since  
10 counsel had informed us earlier that we could not  
11 discuss the case amongst ourselves without an attorney  
12 present, we understood that we couldn't do anything  
13 without unknown repercussions. So under this  
14 misrepresentation we agreed to the settlement.

15 Fast-forward to the DFA, DMS suit. I learned to be  
16 successful -- I learned in farming to be successful you  
17 can't make the same mistake twice. I soon became aware  
18 that some of the tactics that were used in the Dean  
19 settlement was being repeated in our counsel and used us  
20 in this settlement. It was like a page from today's  
21 government: Hurry up and sign this and read what's in  
22 it later.

23 Maybe somewhere in law school there is a course in  
24 Class Action Suit 101 with a guideline because we, the  
25 plaintiffs, became aware of similar tactics by our

1       lawyers as in the Dean settlement. My father told me  
2       many years ago, Fool me once, shame on you; fool me  
3       twice, shame on me. The warning signs were there.

4           We, as plaintiffs, fully appreciate the time and  
5       resources our counsel has dedicated to this case. Our  
6       counsel will undoubtedly move on to the next case with  
7       no fear of their livelihoods or futures being  
8       jeopardized.

9           The defendants in this case -- which was written by  
10      our counsel and DFA without us, the plaintiffs, being  
11      present at the table -- have these protective  
12      provisions:

13           Section 1, paragraph 1.17, under Released Parties,  
14      and I quote, means the settling defendants, their  
15      predecessors, successors, parents, subsidiaries,  
16      affiliates, representatives of any kind, all entities  
17      which they have an ownership interest, shareholders,  
18      partners, members, owners of any kind, attorneys, and  
19      any and all past and present officers, directors,  
20      employees, managing agents, and controlling persons of  
21      such entities, including any past or present officers of  
22      these parties originally -- originally named as a  
23      defendant, but not any other defendant, end of quote.

24           Section 6, paragraph 6.1, line four, and I quote:  
25      Release and Covenant Not to Sue: Parties shall be

1       deemed to have, and by operation of the judgment shall  
2       have, fully, finally, and forever released and  
3       discharged all released claims against the released  
4       party, shall have covenanted not to sue any of the  
5       released parties with respect to all released claims,  
6       and shall be permanently barred and enjoined from  
7       instituting, commencing, prosecuting, or asserting any  
8       released claims against any of the release parties, end  
9       of quote.

10           This is totally unfair and unreasonable to the  
11       class and the class members' ability for current or  
12       future questions or actions to DFA.

13           As for the lead plaintiffs, under section 7.3,  
14       letter (i), and I quote: Settling defendants agree they  
15       will not discriminate or retaliate, or cause  
16       discrimination or retaliation, of any kind whatsoever in  
17       response to the participation in support of the subclass  
18       representatives or any other farmer in this action, end  
19       of quote.

20           A very noble gesture. But without any changes in  
21       their control of our milk check and DFA owning the labs  
22       that test our milk, how will we defend ourselves, and  
23       who will be there to make sure we are treated fairly?  
24       We have asked for independent lab testing but with no  
25       results. Again, DFA maintains complete control.

1           The lawyers have used our names, our reputations.  
2       We have been vilified to our neighbors and fellow  
3       co-ops, fellow producers. The co-ops have threatened  
4       our safety and livelihood. The co-ops control our milk  
5       checks, their laboratories that test our milk  
6       for bacteria, drugs, protein, and butterfat. In short,  
7       they, DFA, could put us out of business tomorrow.

8           Yet collectively, what we may receive above the  
9       class hardly seems equitable or fair given the facts  
10      that our businesses and livelihoods could be ruined. We  
11      have spent many hours on this case, and we feel the  
12      absence of similar guarantees and protections, as the  
13      defendants, that the monetary compensation for the lead  
14      plaintiffs is inadequate and should be more in line with  
15      our risks.

16           Your Honor, I would just like to say, as an entire  
17      class, we help feed the world and are stewards of the  
18      land. My son, Garret, and myself did not enter into  
19      this lawsuit with a monetary award in mind. The fact --  
20      that fact was entered into the record for us by the lead  
21      plaintiffs -- that fact was entered into the record for  
22      us, the lead plaintiffs, by Attorney Kit Pierson, at the  
23      Dean settlement fairness hearing.

24           We entered into this process as a fourth option.  
25       The co-op, which myself was a member for several years,

1       was our first. Questions to Clyde Rutherford and Rick  
2       Smith at co-op meetings were handled with ridicule and  
3       avoiding the issue.

4           Our next step, the executive branch, we were told  
5       the enormity and perplexity of the case was beyond the  
6       scope of their control. In the legislative branch, our  
7       representative gave us an ear, but anything that was  
8       helpful failed to materialize -- materialize.

9           Our last hope is the judicial branch. These  
10       decisions made today may not be earth-shattering, but  
11       they will affect all dairies -- all size dairy farms  
12       severely. The small- and mid-sized farms could be  
13       devastated because of their limit to acquire capital and  
14       the reality that they must market their milk through a  
15       co-op.

16           The defendants, DFA, who control the milk price,  
17       the cost of hauling, premiums paid on protein,  
18       butterfat, et cetera, they also control marketing and  
19       hauling costs and other deductions, for whatever the  
20       co-op deems necessary, at the co-op's discretion.

21           The defendants also control the labs which test for  
22       bacteria and drugs, which with a positive test could  
23       result in an individual paying for a load of adulterated  
24       milk, \$20,000 plus, or a loss of market completely.

25           In conclusion, your Honor, I strongly urge that

1       this settlement be denied. It is unfair to the class  
2 because DFA admits to no wrongdoing and is forever  
3 protected from any further actions. It is unreasonable  
4 because DMS still writes the checks -- Dairy Marketing  
5 Service still writes the checks and controls the milk  
6 for thousands of non-co-op members. And it is  
7 inadequate because the injunctive reliefs do very little  
8 to change DFA's operations.

9           And the monetary award is one-third of the  
10 Southeast/DFA lawsuit settlement. In the Southeast,  
11 there were only 6,000 producers, compared to 12,000 in  
12 the Northeast. Therefore, one-third of the money is  
13 spread over twice as many producers. Mathematically,  
14 DFA has a sweetheart deal.

15           The cooperatives have been an integral part of the  
16 dairy industry. Through the years, cooperatives have  
17 made many positive moves for the dairy farmers, but DFA  
18 and DMS have stepped beyond the definition of a co-op.  
19 We feel that with DFA and DMS's current monopolistic and  
20 monopsonistic practices, this allows for egregious  
21 controls over dairy farmers.

22           DFA and DMS have become judge and jury over our  
23 livelihood. Your Honor, there are many points, much of  
24 which will be addressed by the other lead plaintiffs and  
25 class members, as to what is unfair and what is

1       unreasonable with DFA and DMS. Two issues that must be  
2       resolved: DMS, Dairy Marketing Services, must be  
3       abolished.

4           Without DMS control of non-co-op members' milk,  
5       DFA's full supply contracts will be very tough to meet,  
6       thus allowing for more competition and, one would hope,  
7       a better price for dairymen.

8           Dairy farmers who consciously made a choice not to  
9       join DFA should not have their laboratory work or their  
10       milk check controlled by DFA and DMS. In conjunction  
11       with this, there has to be independent lab testing for  
12       all dairymen to remove any chance of or any suspicion of  
13       improprieties by DFA and DMS.

14           Thank you, your Honor, for giving me a chance to  
15       speak.

16           THE COURT: Thank you. Who would like to  
17       speak next?

18           RICHARD SWANTAK: I will.

19           THE COURT: So, again, if you will just state  
20       and spell your name first.

21           RICHARD SWANTAK: My name is Richard  
22       Swantak, S-w-a-n-t-a-k.

23           THE COURT: And Mr. Swantak is also a class  
24       representative.

25           RICHARD SWANTAK: Good morning, your Honor,

1 and all present.

2 We are a fourth-generation dairy in Delaware  
3 County, New York, that is geographically located in the  
4 northern Catskills. After graduating college in 1968,  
5 receiving a B.S. in business administration with a major  
6 in accounting and personnel, I returned to the farm and  
7 worked with my parents until 1977 when I purchased the  
8 farm.

9 I have watched dairy farm numbers dwindle in  
10 Delaware County from 598 in 1982, producing 414 million  
11 pounds, to 157 farms in 2007, producing 157 million  
12 pounds. Out of my three neighboring farms, two have  
13 exited in 2014; and the third, in all likelihood, will  
14 be gone this year as the three brothers and one sister's  
15 average age is 70, and their health issues have become  
16 insurmountable.

17 Also important to note that the average age of the  
18 American dairy farmer is greater than 57. Dairy farmers  
19 are reluctant to advise their children, families, to  
20 continue or to enter the dairy business as their  
21 experience has proven the milk price over the decades  
22 struggles to approach the cost of production.

23 I have watched neighboring farms, myself included,  
24 look the other way, ignore their buildings' repair, keep  
25 corn planters, choppers, tractors, and so many pieces of

1       equipment, 20, 30, 40, and 50 years, so as to hopefully  
2       hang on. At the same time, we observe inspectors'  
3       vehicles that visit the farm are nearly brand-new  
4       vehicles.

5           Also interesting for all here, I was not a  
6       representative in the Northeast/Dean settlement but  
7       found it notable to read that the DFA, DMS executives  
8       state that, quote, A small, one-time cash payment is far  
9       overshadowed by the long-term negative impact to  
10      farmers' wallets. Exhibit 1.

11           And to familiarize some of youse who may not  
12       realize it, the Northeast/Dean settlement was 30 million  
13       for 12,000-plus producers, where the Southeast  
14       settlement was 140 million for 6,000 producers.

15           Also interesting was an article in the Wall Street  
16       Journal in 2011 titled, "Farmers, Milk Buyers Settle  
17       Antitrust Suit." In the article, the last sentence  
18       states: Mr. -- in quotation marks -- excuse me.  
19       Mr. Smith said the settlement would not hurt the  
20       cooperative which has cash to pay the 158.6 million.

21           I am not impressed with our class counsel stating  
22       the burdensome pioneer work they have done in this -- in  
23       this suit as it appears that many of the same law firms  
24       and attorneys were major players in the Southeast dairy  
25       settlement, totaling 303.6 million with only half the

1       number of producers.

2           In 2014, I have watched my additional premium  
3       dwindle from 44 cents in February to zero as of  
4       November. Also, my BST-free premium of 13 cents has  
5       dropped to 6 cents. Those 51 cents are -- needed by the  
6       dairymen are likely to be a factor in the continuing  
7       downward numbers of operating dairy farms in the  
8       Northeast.

9           A friend from Columbus, Ohio, called me this past  
10      fall asking if the growth hormone was still being used  
11      in Grade A whole milk. I replied, "I'm not sure." So  
12      without question, the public does have concern, if  
13      growth hormones are being used, why -- why lowering the  
14      premium?

15           On January 8th, I did call DMS 800 number in  
16      Syracuse and got nothing but an answering machine. I  
17      left two questions: One, why have premiums been dropped  
18      or lowered; and, two, why hasn't hauling costs dropped.

19           The next day I received a call and was told that  
20      there was too much milk, and they were considering  
21      dropping 41 producers, and that hauling takes a few  
22      months to show up on the milk jug.

23           I often listen to the NPR radio and heard a  
24      trucking firm owner being interviewed this past  
25      December, and he was asked about his thoughts on the

1       substantial drop in fuel prices. He explained that he  
2       was able to order 15 brand-new trucks, something he was  
3       never able to consider before.

4           Many news media sources have interviewed citizens  
5       around the United States asking how they have been  
6       affected by the significant plummet in fuel prices over  
7       the past six months. It has been much of the same  
8       opinion that they are thrilled to have the additional  
9       money that was always spent on fuel now in the pots for  
10      other needs.

11           I did have collective bargaining in my college  
12      courses, however, I don't think one needs those credit  
13      hours to recognize that here we go again as dairy  
14      farmers being the last to reap the positive effects of  
15      \$45 oil compared to \$100 oil.

16           Another concern of utmost importance is the need  
17      for an independent laboratory to do the milk testing.  
18      Over the years, I have had several farmers mention to me  
19      that they were not happy with their butterfat test as it  
20      often was two- to three-tenths lower than their DHI  
21      records supported.

22           In addition, the last several years, most dairy  
23      farmers have been upset by sudden spikes in a bacteria  
24      test called PI, preliminary incubation. This figure  
25      seems to spike for no apparent reason on many farms, and

1       it takes away the average quality numbers that are  
2       needed to receive a quality premium. When asking our  
3       inspectors what causes these sudden increases in PI  
4       counts, or even what is the PI count, we are given an  
5       answer that -- an answer that they themselves can't  
6       really explain what the test consists of.

7           I would not feel I have represented my 12,000-plus  
8       class producers fairly if I were to go along with this  
9       fraction of the settlement that the Southeast Orders 5  
10      and 7 received of 300.6 million for 6,000 producers.  
11      Being beat up on the small Dean settlement of 30  
12      million, I don't feel comfortable allowing DFA and DMS  
13      to slap the Northeast dairymen harder and more abusively  
14      than ever with a 40-million settlement that should be  
15      more in line with a 250-million settlement minimum.

16           I also think the DF -- that -- excuse me. I also  
17      think that DFA and DMS executives will feel better of  
18      their settlement if it is more in concert with the  
19      Southeast settlement's monetary numbers in total. The  
20      Dean Foods managers will not be able to read on their  
21      computers the small settlement that DFA and DMS gave  
22      their Northeast producers. With a fine comparable  
23      settlement, I believe it should be a strong building  
24      block of trust needed to help secure the existence and  
25      good relationship that we, as producers, seek.

1           The United States citizen has been blessed with a  
2 quality dairy product, as well as abundance. Only the  
3 seven-day hard work and responsibility of the dairy  
4 producer has this been possible. If we here in the  
5 Northeast erode the fortitude and good will of the  
6 American dairy farmer, we will have done an injustice to  
7 all.

8           And then I just added this last note: I am hoping  
9 the sunshine I experienced walking in this courthouse  
10 this morning will help shed light on this case.

11           Thank you, your Honor.

12           THE COURT: All right. Thank you.

13           Does anybody else want to speak?

14           Yes.

15           GARRET SITTS: My name's Garret Sitts,  
16 G-a-r-r-e-t, S-i-t-t-s. I am a named class rep.

17           Hello, your Honor. My name is Garret Sitts. I  
18 would like to make it very clear that I would be willing  
19 to accept a settlement that offered real market relief  
20 over going to trial.

21           THE COURT: I am going to ask you to move a  
22 little bit closer to the microphone, and -- you are soft  
23 spoken like me, so really project your voice. Okay?

24           GARRET SITTS: Okay. You want me to start  
25 over? I am not --

1                   THE COURT: No, I heard you.

2                   GARRET SITTS: I am not a public speaker. I'm  
3 sorry.

4                   THE COURT: You're doing fine. Go ahead.

5                   GARRET SITTS: Sorry. I will just start --  
6 I -- I would like to make it very clear that I would be  
7 willing to accept a settlement that offered real market  
8 relief over going to trial. I did not enter into this  
9 litigation looking for a monetary award, and what I am  
10 looking for is market relief, a market that is not  
11 controlled and manipulated by the defendants.

12                  Some issues I have with the proposed settlement,  
13 the relief: Section (a). Settling defendants, during  
14 terms of this agreement, will not enter into full-supply  
15 agreements for the supply or sale of raw milk in  
16 Order 1; however, settling defendants retain the right  
17 to renew existing full-supply agreements.

18                  The defendants currently have a monopoly on plant  
19 access, and this provision allows the defendants to  
20 maintain that monopoly by renewing existing full-supply  
21 agreements. No relief.

22                  Paragraph -- or section (d) of the relief:  
23 Settling defendants agree any cooperative member,  
24 associate, affiliate of DFA, DMS, in Order 1 may, during  
25 the times of this agreement, terminate its relationship

1       with DFA, DMS upon no more than 90 days' written notice  
2       without penalty.

3                 I believe this needs to include language that  
4       allows processors to terminate their relationship  
5       full-supply agreements with the defendants as well. So  
6       if the defendants are allowed to maintain their monopoly  
7       on plant access, the farmer who chooses to terminate  
8       their membership, relationship with the defendants will  
9       have their access to plants blocked by full-supply  
10      agreements. The end result is the producer is not going  
11      to be able to leave because they will not be able to  
12      find a market for their milk.

13                 Perhaps the most outrageous section of this  
14      settlement to me is the release of claims. The named  
15      defendants are DFA and DMS. Why did their employees,  
16      subsidiaries, joint ventures, partners, et cetera, need  
17      to be released from legal liabilities? My question is,  
18      what have they done?

19                 I challenge the attorneys on both sides to produce  
20      a class action settlement approved with a release of  
21      claims as broad and encompassing as this one. Where is  
22      the precedence?

23                 In paragraph (i), Settling defendants -- that they  
24      will not discriminate or retaliate, or cause  
25      discrimination or -- of any kind whatsoever in response

1       to the participation support of the subclass  
2       representatives, and any -- or any other farm -- farmer  
3       in this action.

4           My question is who bears the burden of proof? Who  
5       will enforce this? The fact is the defendants own --  
6       own Dairy One, a milk quality testing lab, which is used  
7       to test producers' milk quality, which results affect  
8       producers pay price via premiums. I strongly believe  
9       the defendants use their ownership and control of Dairy  
10      One to control, intimidate, and eliminate troublemakers,  
11      which this settlement fails to address.

12           An example: Our farm was a member of DFA from 1998  
13      through 2007. In that time period, we were very  
14      critical and outspoken of the defendants' business  
15      practices. In late 2007, we left DFA and began shipping  
16      to Worcester Creameries. At that time, Worcester  
17      Creameries was the only processor in our geographical  
18      area that was not affiliated with the defendants.

19           In the time that we were members of DFA, we had  
20      three spoiled loads of milk, a minimum of 25 illegal  
21      bacteria PI, somatic cell, et cetera, counts resulting  
22      in tens of thousands of dollars in lost income.

23           We became members -- or started shipping with  
24      Worcester Creameries in late 2007. From 2007 to date,  
25      we have had zero spoiled loads of milk, zero illegal

1       counts, and this is over seven years with zero milk  
2       quality issues. I have changed nothing, your Honor. I  
3       still do the same -- milk the cows and handle the milk  
4       the same way.

5                 One of the defendants' employees has even gone as  
6       far as to tell my neighbor not to associate with me  
7       because I really F'd things up and I may disappear one  
8       day.

9                 The Dean settlement: We were unhappy with the Dean  
10      settlement because the lawyers were willing to settle  
11      before the discovery process was completed. We were  
12      told by our attorneys that Dean's market share was only  
13      30 percent and we had a weak case, and that's why we  
14      needed to settle.

15                We did not believe this. We believed their market  
16      share to be more like 70 to 90 percent. We acquired  
17      maps from the market administrators of plants,  
18      locations, plants' IDs, compared them to the  
19      spreadsheets that the attorneys had. The maps from the  
20      market administrator clearly pointed out that they had  
21      left out a large number of plants. We tried to point  
22      this out to the attorneys. They were unwilling to  
23      accept it.

24                We were led to believe that it was illegal to  
25      discuss the case without counsel present. On the

1 conference call when the settlement was filed, the day  
2 of the settlement was filed, one of the lawyers went on  
3 a rant of profanity and threatened us.

4 We were discouraged from attending our fair -- the  
5 fairness hearing. I was later told by a man, John  
6 Bunting, who is pretty instrumental in putting these  
7 cases together -- in my opinion, he is an expert -- that  
8 after preliminary approval of the Dean settlement and  
9 before the fairness hearing, Cohen's expert that did the  
10 market share on Dean contacted them and told them that  
11 they grossly underestimated Dean's market share. This  
12 was never passed on to us.

13 In the last conference call with the DFA settlement  
14 we had, we were informed that they -- they did not have  
15 to have our support to file. We demanded the reasons  
16 for our objections be attached to the filing. We were  
17 told no, they would not. I believe if that was done,  
18 that would have saved us all a lot of time and  
19 aggravation. They did tell us that our objections would  
20 be made more than clear to you. Your order denying  
21 preliminary approval was obvious those questions were  
22 not made more than clear to you.

23 So on July 14th, Jonathan and Claudia Haar, Richard  
24 Swantak, Ralph Sitts, Garret Sitts, and Alice Allen on a  
25 speakerphone, met to draft opposition to the proposed

1 settlement in response to the questions raised in the  
2 denial of preliminary approval. At no time did Alice  
3 Allen express opposition to this document. In fact,  
4 Alice had suggested things that -- things to be included  
5 and they were.

6       Later that day, the final draft of that document  
7 was e-mailed to Alice Allen for her review. July 15th,  
8 in the morning, I spoke with Alice, and at that time she  
9 was okay with the contents of the document and was okay  
10 with it being filed. We sent it to the attorneys and  
11 demanded it be filed. We were told it would be  
12 submitted. It was submitted *in camera*. We did not ask  
13 for it to be submitted *in camera*.

14       Because it was submitted *in camera*, we had no way  
15 of verifying that was our actual document, our actual  
16 words. We were told by the clerk that there was  
17 something submitted *in camera*.

18       I have an e-mail here from one of the attorneys to  
19 Ralph and Alice and Vera. It says, As we previously  
20 informed you, the statement regarding the settlement  
21 prepared by some of you was delivered to the court on  
22 July 23rd to be filed *in camera* to preserve the  
23 confidentiality of attorney/client communications  
24 referenced in the settlement -- or the statement,  
25 rather.

1           In subclass counsel's response, Yesterday the  
2 court's clerk contacted us and relayed that Judge Reese  
3 (sic) would rather not view attorney/client  
4 communications, and that subclass counsel providing a  
5 simple statement regarding the basis of class  
6 representatives' opposition to the proposed settlement  
7 would suffice for Judge Reese.

8           THE COURT: So it's "Judge Reiss," but that's  
9 okay.

10           GARRET SITTS: Sorry, I'm -- I'm sorry.

11           THE COURT: That's all right.

12           GARRET SITTS: I'm nervous.

13           THE COURT: That's all right.

14           GARRET SITTS: Pursuant to the court's  
15 request, sub counsel prepared the attached simple  
16 statement to be filed in supplement to the July 23rd  
17 submission: Please feel free to call if you have any  
18 questions.

19           According to the clerk's office, there's no record  
20 of that communication.

21           And then I have one last thing that really blows my  
22 behind. It's a statement from DFA. It was released  
23 after the denial of preliminary approval. It was  
24 written by Brad Keating, K-e-a-t-i-n-g. He is the chief  
25 operating officer of DFA's Northeast dairy.

1           It says, Statement: DFA explains objections filed  
2       in Northeast lawsuit. Dairy Farmers of America,  
3       Incorporated, and Dairy Marketing Services, LLC, have  
4       defended ourselves since this lawsuit was filed in 2009,  
5       and we continue to do so. This lawsuit has no merit.

6           The activities of DFA, DMS, and other affiliated  
7       milk marketing cooperatives in the Northeast improve pay  
8       price and stabilize the milk marketing for cooperative  
9       members and independent producers alike. As a  
10      farmer-owned cooperative, we worked hard to ensure the  
11      success, profitability of dairy farmers. It is our  
12      responsibility and obligation to act in their best  
13      interests. We take this very seriously.

14           The proposed settlement recently announced by the  
15       plaintiffs' attorneys, who represent some of our  
16       members, as well as dairy farmers who market milk  
17       through DMS, cause us serious concern. The proposed  
18       settlement demonstrates the best interest of dairy  
19       farmers are not being given full consideration. The  
20       settlement favors one segment of the class at the  
21       expense of others, creating winners and losers by giving  
22       market access to some and taking market access away from  
23       others. This is a clear conflict of interest by  
24       plaintiffs' attorneys.

25           Additionally, despite reports that this settlement

1       is an economic windfall for dairy farmers, we believe  
2       that, if approved, the settlement has the potential to  
3       harm all producers in the Northeast effectively by  
4       lowering market price for milk.

5           My question is, do we have a settlement,  
6       your Honor? It seems to me the defendants have  
7       withdrawn and publicly trashed the settlement. I would  
8       like to know who ordered Mr. Keating to write this, to  
9       disseminate it, and for what reason?

10           THE COURT: Thank you.

11           GARRET SITTS: Would you like --

12           THE COURT: Yeah, if you would like -- we will  
13       make sure that we have copies for everybody, and  
14       we'll -- if you want to submit it, we will take it. So  
15       you can approach, and Miss Ruddy will take it from you,  
16       and she will make copies on our break.

17           And this is about a good time for a break, so we  
18       take one midmorning, 10 to 15 minutes, and then we will  
19       come back and see if anybody else wants to be heard.

20           Anything further before we take our break?

21           Okay. Thank you.

22           (Court was in recess at 10:38 a.m.)

23           (The following was held in open court at 10:52 a.m.)

24           THE COURT: We are back on the record in Alice  
25       Allen, et al., versus Dairy Farmers of America, et al.

1       And we are in our fairness hearing.

2           And let me ask if we have any members of the class  
3       who also want to speak?

4           Yes. And would you --

5           MIKE EBY: Yes, my name is Mike Eby.

6           THE COURT: And could you spell your last  
7       name?

8           MIKE EBY: E-b-y.

9           Dear United States District Court for the District  
10      of Vermont:

11           I am the seventh-generation Lancaster County,  
12      Pennsylvania, dairy farmer and member of Land O'Lakes  
13      cooperative marketing Grade A in Federal 1 throughout  
14      the entirety of the time period covered by the proposed  
15      Northeast dairy settlement.

16           In the interests of the ability for future  
17      generations to continue my family's dairy farming  
18      tradition, I strongly object to the proposed settlement  
19      of this case. I have brought my eighth-generation son  
20      along with me today to show the importance of this  
21      matter.

22           My objection is based upon the following reasons:  
23      First, the amount of the proposed settlement is  
24      \$50 million or approximately 16 cents per hundredweight.  
25      This insignificant amount falls way short of the actual

1       alleged damages caused by DFA, DMS anticompetitive  
2       behavior.

3                 The damage amounts calculated by Dr. Kalt and  
4       Rausser range from 41 cents to 69 cents. And just as a  
5       comparison, I brought my Land O'Lakes 2003 milk check  
6       with me, which was one of the lowest years during the  
7       time period of dairy farming for me, in the amount of  
8       \$10.80 for my mailbox price.

9                 By the nature of the scrutiny expected, these  
10      calculations of 41 to 69 cents are themselves very  
11      conservative and would be considered a settlement. The  
12      same defendants in the recent Southeast case paid their  
13      members approximately 300 million as compensation for  
14      the same anticompetitive behavior.

15                 Second, the -- more important than the dollar  
16      amount is the accountability for the exoneration from  
17      the behavior alleged in the suit that will only occur if  
18      the case goes to trial. As dairy farmers, we need to  
19      have confidence that our farmer-owned cooperatives truly  
20      act in our best interest. The information that would  
21      come out in a trial or be buried in a settlement is  
22      vital to the confidence. This should not be an option  
23      for the defendants to pay a relatively small settlement  
24      fee for the privilege of continuing business as usual.

25                 And I'd like to read that last sentence again: It

1       should not be an option for the defendants to pay a  
2       relatively small fee settlement for the privilege of  
3       continuing business as usual.

4              Thank you, your Honor.

5              THE COURT: Thank you.

6              Somebody from that same row?

7              Yes.

8              ALICE ALLEN: Thank you, your Honor. My  
9       name is Alice Allen. And unfortunately, I need to read  
10      so I don't draw a blank here.

11         My name is Alice Allen. I began milking cows for  
12      my neighbors in 1964. Milking cows helped pay my  
13      tuition through four years of college at the University  
14      of New Hampshire.

15         In 1973, upon receiving my bachelor's degree in  
16      dairy science from UNH, I began raising dairy heifers on  
17      a rented farm to start my own herd. I started shipping  
18      milk in July of 1975 to HP Hood in Boston.

19         In 1983, as a member of a then-young dairy farmer  
20      association, we began our first milk marketing study  
21      group. For the past 30 years, this group, in one form  
22      or another, has succeeded in bringing nationally  
23      respected speakers to our meetings to help dairy farmers  
24      educate ourselves on marketing issues such as dangers of  
25      massive consolidation, monopoly, monopsony, and possible

1       conspiracy.

2                 With expressed interest from our legislators, I was  
3       asked to go to Washington, D.C., in the late summer of  
4       2001 to meet with staff of House and Senate Judiciary  
5       Committee members to detail the market-related struggles  
6       of Northeast dairy farmers. We Northeast dairy farmers  
7       had high hopes that the federal government would in some  
8       way intervene and begin enforcing regulations such as --  
9       Capper-Volstead and the historical portions of the  
10      agriculture adjustment acts dating back to the 1930s.  
11      There was much discussion but very little positive  
12      action from our government.

13                 The proposed settlement is not perfect and not all  
14       I might have hoped for. And I am not going to argue  
15       with anything that the other named plaintiffs said, as I  
16       am a named plaintiff in the non-DFA subclass.

17                 The settlement is a compromise between both sides.  
18       And there are risks to both sides in going to trial.  
19       And the reason it seems that I had to disagree with my  
20       co-class reps is, when we were going to have a unified  
21       front and fight the settlement, I had great anxiety  
22       about it, knowing that going to trial might not serve  
23       our farmers any better.

24                 I had such upset about it that I went to see my  
25       regular lawyer, Bob Gensburg in St. Johnsbury, Vermont,

1       who has been following the case and also knows me  
2       from -- from years of dairy farming. And he said, "If  
3       the court wanted only one opinion, there would only be  
4       one named plaintiff. You have to go with what you  
5       believe and how you believe you can best represent your  
6       farmer neighbors, to the best of your ability."

7           So at that point, I had to say that I was going to  
8       support the settlement. It was not a perfect settlement  
9       by any stretch of anyone's imagination. But I also have  
10      to say that this is the first time in my career and  
11      life, having been involved in dairy long before I was  
12      old enough to milk cows -- this is the first time we  
13      have made it this far. And I think farmers need to  
14      realize that we wouldn't be this far without the late  
15      John Bunting having been a very articulate and dedicated  
16      dairy farmer who understood these issues and had the  
17      ability to bring these issues to the firm of Cohen  
18      Milstein, who agreed to take the case. John passed away  
19      in November, and he is a loss to all of us.

20           But I do believe that the issues that are now  
21      public record through this case are very, very important  
22      for farmers to pay attention to. I am disappointed that  
23      there aren't more farmers in this room on either side.  
24      I think -- I have seen more farmers at a machinery  
25      auction than I am seeing here. That may be partly due

1 to the fact that the dairy day of the Vermont Farm Show  
2 is today. I'm not sure.

3         But I believe that the really -- the only way for  
4 farmers to have a say in this is to become very, very  
5 educated and to know that the facts, that have been  
6 brought out through this case need to be understood by  
7 all farmers; that we can't just fight amongst ourselves,  
8 that we have to create a better cooperative. And I am  
9 at a loss to say how to do that except by being  
10 involved.

11         I have been involved as much as I could my entire  
12 life. And my farmers that I worked for in the early  
13 days encouraged me to get involved and stay involved,  
14 hence the milk marketing study group.

15         And I know that there needs to be more structural  
16 relief, but I still do believe that this being the first  
17 and only time that Northeast farmers have gotten this  
18 far, it's a very important milestone that we should not  
19 neglect, that we should not downplay. It should be an  
20 honor that we have gotten this far.

21         I have talked with several of the named plaintiffs  
22 in the Southeast case. That case, yes, it got more  
23 money for those farmers, but the case had a lot of  
24 different facts than our case. It was a different --  
25 different case altogether, as I understand it from those

1       named plaintiffs. They're impressed that we have gotten  
2       this far in the Northeast, knowing what they have  
3       learned about our case.

4           While I would like a better settlement, I know  
5       there is no guarantee that we would prevail at trial.  
6       Having steadfastly remained committed to this case by  
7       representing the best interests of Northeast dairy  
8       farmers, I still -- in spite of everything I am hearing  
9       today, I do not believe justice would be any better  
10      served for Northeast dairy farmers by going to trial.  
11      Not only is the outcome of the trial uncertain, but I do  
12      not believe that the Court is in a position to take over  
13      the management of milk marketing in the Northeast.

14           What I do believe, as I said before, is for any  
15      positive changes to occur in dairy marketing in the  
16      future, farmers themselves -- each and every dairy  
17      farmer -- must become involved. You are more  
18      involved -- we are all more involved in our dairy  
19      genetics, in our farm machinery, and growing crops, but  
20      milk is what we survive on. The income from selling our  
21      milk is the most important thing.

22           We need to take a more active role and not just  
23      leave it up to the few who have spoken here who are  
24      trying their best to bring relief to the Northeast dairy  
25      farmers. We all have to pay attention, whether you are

1 DFA or non-DFA. It doesn't matter. We all -- every  
2 single dairy farmer must pay attention.

3 And if you don't agree with what some of your  
4 neighboring farmers are saying, read the documents.

5 Ask -- if you cannot understand some of the documents, I  
6 will do my best and ask the attorneys to find people who  
7 can help us understand what's in these documents. Some  
8 of them are very revealing. But it, again, is up to the  
9 dairy farmers.

10 And I know that seems like a very difficult request  
11 for farmers because it's time consuming, it's difficult,  
12 and I have to admit sometimes it's very boring to read  
13 some of this. But it is the only way -- and I repeat  
14 the only way -- every farmer getting involved and  
15 understanding the situation.

16 My uncles who were producer-dealers years ago --  
17 they have all since passed away -- they said, "We always  
18 thought it was going to get better but it never did."  
19 This is our chance. There are facts. This case has  
20 brought out many facts that were heretofore hidden from  
21 our sight as dairy farmers. But there's a lot of  
22 information out there now, and it is up to us. You  
23 don't like what you see going on, you have got to go  
24 after it, and you have got to pay attention.

25 Thank you very much for the privilege of speaking.

1                   THE COURT: All right. Thank you.

2                   JONATHAN HAAR: Good morning.

3                   THE COURT: Good morning.

4                   JONATHAN HAAR: My name is Jonathan Haar.

5                   That's H-a-a-r. I am a class representative for the  
6 DFA, DMS subclass.

7                   First, I want to thank you, your Honor, for the  
8 opportunity to address this Court on behalf of the dairy  
9 farmers I represent. This has proven to be a daunting  
10 project. I learned over the last couple weeks that my  
11 three youngest can handle barn chores on their own.

12                  There is so much information to share relative to  
13 this proposed relief that I believe is important for  
14 you, your Honor, to have in order to make an informed  
15 decision. You will hear a lot from our esteemed counsel  
16 making affirmative statements concerning the merits of  
17 said settlement.

18                  I have read, and no doubt you have, many of these  
19 arguments already. I want to be clear about this:  
20 Every time they attempt to assert that this is a fair,  
21 reasonable, or adequate settlement, they demonstrate  
22 their ignorance of or contempt for this class and the  
23 facts of the risk that we live under.

24                  In order for a settlement to be fair, reasonable,  
25 or adequate, it needs to be looked at in the light of

1       the instant case. Comparisons to irrelevant, unrelated  
2       settlements are useless to inform the decision-maker.

3           If I may digress for just a moment, I believe it  
4       may be useful for the Court to provide a brief  
5       introduction to this class that is now dependent on your  
6       decision here as to whether we find any relief.

7           Excuse me.

8           This class feeds everyone in the courtroom. Our  
9       routine consists of a minimum of six or seven hours of  
10      daily work, what we call chores, mostly feeding and  
11      milking cows. That is seven days a week, 365 days a  
12      year. I have many neighbors who haven't missed chores  
13      in years, some in decades. That is around 40 hours a  
14      week of difficult and dirty work, if everything goes  
15      well, without equipment failure, flat tire, or animal  
16      health issues. This, of course, does not include a  
17      single seed planted, crop harvested, bill paid, snow  
18      shoveled, or board nailed back up.

19           As a result of this level of commitment, we are a  
20      class ripe for abuse. And we have been abused, first by  
21      the defendants and now by those who purport to represent  
22      us and our interest as counsel. They're not only silent  
23      in the face of evil, but they would happily sell us out  
24      for the \$16 million.

25           This is not like a Pella window case from the

1      Seventh Circuit decided this past June with respect to  
2      getting paid or not for a defective product. No, our  
3      livelihoods are daily threatened by these defendants,  
4      and our so-called counsel would leave us at their mercy.

5           Forgive me for my long-winded introduction. I  
6      would like to get to the substance of the proposed  
7      settlement and, along procedural lines, confront some of  
8      the issues surrounding negotiation and misleading  
9      statements from both renewed motions and declarations of  
10     Mr. Abrams and Mr. Brown. It will be necessary for me  
11     to briefly revisit the Dean settlement, as counsel has  
12     used that as evidence against us.

13           With regards to procedure, I would like the Court  
14     to consider our issues in light of 23(g)(4). Concerning  
15     the Dean settlement, my wife and I were informed there  
16     is no reason to be at the fairness hearing. The  
17     courtroom is the domain of the attorneys, is what we  
18     were told. As such, we were actively discouraged from  
19     attending.

20           You have heard about the push to get the Dean  
21     settlement done and the divide-and-conquer tactics used  
22     by Cohen Milstein. Apparently the Sitts and Allens were  
23     in opposition to the Dean settlement. My wife and I,  
24     who were in Washington for my deposition, were unaware  
25     of the questions raised by our fellow class

1       representatives.

2           On the evening of December 23rd -- or -- 22nd or  
3           23rd of 2010, while in the offices of Cohen Milstein,  
4           Mr. Brown came into the room where we were. He quietly  
5           consulted with Mr. Pierson, who was with us at that  
6           time. Then he and Mr. Brown asked if we would accompany  
7           him to his office to speak with Alice Allen, who was on  
8           the phone.

9           When my wife and I spoke to Alice, using Ben's  
10          arguments -- Mr. Brown -- we were able to sway her.  
11          Mr. Brown explained the reasons for taking the Dean  
12          settlement as primarily being, number one, it will  
13          secure the class going forward. Your Honor would be  
14          hard-pressed not to grant us class certification for our  
15          case having just approved the class for settlement.  
16          This, of course, was proven to be a false statement.

17           His second reason we should approve is because it  
18          would give us an impetus going forward after, and I  
19          quote, the big fish, DFA, DMS, which is worth five times  
20          as much. This, too, has proven false, as evidenced by  
21          the proposed settlement on the table.

22           How do I know the monetary amount is inadequate?  
23          Well, it is because Mr. Benjamin Brown told me so. He  
24          said this settlement is worth \$150 million. And that  
25          was on the -- at the onset of discovery, before class

1 certification, Daubert, et cetera. I don't need to go  
2 through it. You were here for all of it.

3 In addition, Mr. Bob Abrams said in the Southeast  
4 case, docket 1922-1, filed on the 21st of January 2013,  
5 on page 13, in discussing monetary award in that case,  
6 he cites Relafen, 231 F.R.D. 64, which I have no idea  
7 what any of all that means, only to say, I quote, Noting  
8 settlements obtaining 26 recovery -- 26 percent recovery  
9 are reasonable.

10 Our recovery of \$50 million represents just 14  
11 percent of the DFA, DMS reduced damage model after  
12 preliminary judgment of \$350 million. I suppose that  
13 should mean that this recovery is unreasonable and  
14 inadequate, according to Mr. Abrams.

15 It seems, since I am into the settlement already --  
16 excuse me -- I will continue for just a moment looking  
17 at the monetary aspect of it with regards to the  
18 plaintiffs' incentives. None of us got into this  
19 lawsuit for money. But for these attorneys to offer us  
20 \$20,000 to compensate for our risks against -- again  
21 demonstrates their ignorance of or contempt for those  
22 risks.

23 I received a call recently from a Mr. Joe Davitt.  
24 He told me he would be sending a letter objecting to  
25 this settlement. He explained to me he used to be a DFA

1 delegate, but he said issues he raised, he questioned  
2 the *status quo*: How can we as delegates only vote on  
3 nondairy policy issues?

4 Well, I guess he made too much noise and asked the  
5 wrong questions. He told Mr. Brad Keating, "I am just  
6 asking the questions I am being asked by my farmers."  
7 The field man, his field representative, stopped by the  
8 farm one day and told him, "We don't have a market for  
9 your milk," and they wouldn't be picking him up anymore.  
10 So much for DFA being a farmer-run cooperative. He was  
11 a duly-elected representative.

12 Mr. Davitt called Arden Tewksbury. Arden said he  
13 could get the other local cooperative to pick him up.  
14 That co-op sent out their representative. He said, "It  
15 should be no problem to pick up your milk. I will call  
16 you tomorrow to make arrangements." Well, he did call.  
17 He said, "Sorry, Joe. We can't pick up your milk. DFA  
18 has threatened our access to the milk plant if we pick  
19 you up." Mr. Davitt was a third-generation farmer. He  
20 was forced to sell his cows three years ago. He said,  
21 "I doubt if I will ever milk a cow again."

22 With the exception of the Allens who sold their  
23 cows several years ago, this is the risk that we, as  
24 class representatives, live with every day. This  
25 falsely called agricultural co-op maintains all its

1       options with regards to crushing the businesses of  
2       anyone who dares to oppose them.

3           Our counsel and this proposed settlement leaves  
4       unscathed, in Rick Smith's own words, and they throw  
5       \$20,000 our way and have the unmitigated audacity to  
6       suggest that this covers the risk we have taken.

7           With regards to settlement negotiations: When you  
8       go from hearing no talk of settlement, no talk of  
9       settlement, not even close to settling, then settle, it  
10      has a way of focusing our attention on areas of primary  
11      concern.

12           Furthermore, our opinions have been informed by  
13      over four years of experience on this case. Mr. Pierson  
14      insisted that injunctive relief would need to keep in  
15      mind their business model, them being DFA. We would  
16      need to leave that unaffected. Injunctive relief that  
17      does not affect their business model is simply to  
18      rearrange the chairs on the deck of the Titanic. As  
19      long as cooperatives make products and process milk,  
20      they have a fundamental conflict of interest.

21           Having said that, we did propose injunctive relief  
22      that would not affect their business model, unless:

23           Number one, divesting themselves of all testing  
24      laboratory facilities should not affect their business  
25      model, unless they have been shaving a little bit of

1       protein or fat off of the farmers' tests or using  
2       testing as a club or a way to pilfer premiums.

3               Number two, requiring representation from the board  
4       of directors to be present at all negotiations of  
5       contracts for the supply of raw milk, that should not  
6       affect their business model unless DFA, DMS is doing  
7       something they don't want their directors to see.

8               Number three, third-party handling of delegate  
9       elections shouldn't affect their business model unless  
10      they are concerned about getting the wrong kind of  
11      delegates.

12               Why Mr. Pierson, as an attorney allegedly  
13       representing the farmers, should be concerned about  
14       protecting the business model of DFA and DMS is only one  
15       of the many questions we have asked concerning his  
16       behavior.

17               One would think our prestigious negotiators could  
18       have gotten us something. What we have here is, in  
19       absolute terms, zero. Our esteemed counsel, to assert  
20       otherwise, is, at best, delusional. While I suspect the  
21       language used by Mr. Abrams in his declaration and  
22       renewed motion for preliminary approval is sufficiently  
23       nuanced, that we couldn't accuse him of dishonesty, it's  
24       a semantical stretch to say that some of our proposals  
25       were accepted in hope or not at all or in part. I don't

1 believe that any were accepted in whole. As I said,  
2 from when we went from no settlement, no settlement, to  
3 settle, it sharpens your focus.

4 Garret and I both stated we had nonnegotiables.  
5 Mr. Abrams explained there are no nonnegotiables, except  
6 the money, the money which, of course, affects counsel.  
7 As for our requests, well, we can't have nonnegotiables.  
8 Garret talked about the divesting DFA, DMS of their milk  
9 testing laboratories. I guess that falls under the  
10 category of "not at all." My idea of third-party  
11 handling of delegate elections, as we explained in our  
12 document filed on the 23rd, was, shall we say,  
13 emasculated.

14 With regards to negotiations, you may have gathered  
15 things weren't going well in late June between our  
16 counsel and ourselves. We realized very quickly that  
17 this proposed settlement was inadequate, unreasonable,  
18 and unfair. We dug in our heels on behalf of our class.

19 When your Honor denied preliminary approval  
20 requesting the reasons for class representatives  
21 unanimously opposing this proposed settlement -- excuse  
22 me -- Mr. Brown contacted my wife to set up a conference  
23 call for us to explain our issues. We had just invested  
24 so much of our precious early summertime in settlement  
25 talks, which proved completely fruitless.

1           She said, "If the judge wants to know what our  
2 objections are, we won't waste your time," referring to  
3 counsel. "We will give her," referring to your Honor,  
4 "the purest document possible. We will write it  
5 ourselves." We thought that would be the easiest way to  
6 avoid the wordsmithing and editing that had been our  
7 history with Mr. Pierson, who correctly states in his  
8 declaration that Mr. Brown was our primary contact as  
9 subclass representatives. That was because we wanted to  
10 fire Cohen Milstein if they didn't remove Mr. Pierson  
11 who had -- up to that time, had been our primary  
12 contact.

13           Anyway, Claudia told Ben, "We, the class reps" --  
14 Mr. Brown, sorry -- "We, the class reps, will get  
15 together and create a document. We will send it to  
16 Mr. Manitsky to file on our behalf." Mr. Brown agreed  
17 that that would be fine. He assured us it would be  
18 filed verbatim.

19           He also impressed upon Claudia that we need to get  
20 this done right away. I believe it was Friday he  
21 called. On Monday, July 14th, Richard Swantak, Ralph  
22 and Garret Sitts, Claudia and I met at the Sitts' --  
23 Sitts's farm. Alice was present via speakerphone. We  
24 put together the document titled Class Representatives'  
25 Opposition to Proposed Settlement.

1           Contrary to Mr. Brown's declaration, Miss Allen had  
2 not wavered in her opposition to the settlement until  
3 sometime after the 14th of July. Fact is, Alice was an  
4 active contributor. She was particularly concerned that  
5 we should share with the Court the following from our  
6 document, and I quote: Counsel apparently did not  
7 inform the defendants either -- and this would be in  
8 reference to the class representatives' unanimous  
9 opposition. And I go on with the quote: Counsel  
10 apparently did not inform the defendants either as DFA  
11 remained confident enough about their agreement to  
12 publish it as a finished matter to its membership on  
13 Thursday, July 3rd, and on Farm Journal's ag website on  
14 Tuesday, July 8th.

15           What happened to Alice Allen after July 15th is a  
16 subject of speculation. We overnight mailed our  
17 document on the 15th. It was received by Mr. Manitsky  
18 at Gravel & Shea on the 16th. It was filed with the  
19 court on the 23rd *in camera*. This was something we  
20 strenuously objected to.

21           Our counsel claimed attorney work product and  
22 attorney/client privilege. Our understanding of  
23 attorney/client privilege is that it is something the  
24 client claims, not the attorney. And in looking back,  
25 or -- and there was some question at the time, even, if

1 contrary to our agreement, there was some attorney work  
2 product, in the form of tampering with our document.

3 We, of course, despite our best efforts, were not  
4 able to view the document that was submitted to the  
5 court. We were unable to confirm or dismiss our  
6 suspicions. I believe this is our filed copies of that  
7 document.

8 Before diving into the nuts and bolts of the  
9 proposed settlement, I note in the renewed motion for  
10 preliminary approval a couple of items: Number one,  
11 counsel speaks of the proposed settlement being  
12 beneficial in the light of timing. We have discussed at  
13 length how the financial compensation is -- is  
14 functionally irrelevant. I will explain how the same is  
15 true for the alleged relief, although actually a lot of  
16 that's already been covered -- excuse me -- as well.

17 Furthermore, I believe -- what I'd like to get at  
18 is furthermore, I believe the threat of this legal  
19 action hanging over the heads of DFA, DMS has a  
20 beneficial effect on the farm. Immediate closure of the  
21 matter, especially in the form of a sellout to the  
22 defendants, would remove the protection that the unknown  
23 outcome of these proceedings provides to us.

24 Second point: Also from the memorandum of law in  
25 support of the renewed motion for preliminary approval,

1       it cites Maywalt versus Parker & Parsley Petroleum  
2       Company. In a pinnacle of arrogance, our esteemed  
3       counsel quotes, "When a conflict arises between the  
4       named plaintiffs and the rest of the class, the class  
5       attorney must not allow decisions on behalf of the class  
6       to rest exclusively with the named plaintiffs."

7           In the same motion they cite numerous cases and go  
8       to great lengths to explain that they, as counsel, had a  
9       right to negotiate for the class, a right we never  
10      questioned. Furthermore, there is no conflict between  
11      the class and the class representatives.

12           All their arguments on these issues is the classic  
13      case of complicating the obvious and trivializing the  
14      momentous, the obvious being the conflict here is  
15      between plaintiff counsel and the court they -- and the  
16      class they purport to represent; the momentous being the  
17      failure of said counsel to come up with anything  
18      remotely resembling a fair, reasonable, or equitable  
19      settlement.

20           Enough of the pleasantries. Let's look at what the  
21      settlement says, not what the lawyers say it says. I  
22      will try to summarize this fairly quickly, focusing on  
23      the most salient points, and I will attempt to edit as  
24      we go. I hope that doesn't cause much hesitation.

25           The copy I am working with was apparently filed on

1       October 3rd, and the signature page is signed by  
2       Mr. Pierson and Mr. Kuney on July 1st.

3           The first thing that I noticed was that on page  
4       one, rather than defining the expansion of the complaint  
5       in the definition section, it's tucked away right here.  
6       We will revisit it when we get to the relief, but  
7       they -- the definition of the complaint is not the  
8       complaint, it's not the complaint and the amended  
9       complaint, but it is the complaint and any other  
10      pleading filed in this matter or any consolidated  
11      matter.

12           And in the process of these declarations and  
13      proceedings, I believe we have basically touched on  
14      every -- every issue that is relevant to the dairy  
15      industry. So we are talking about all dairy industry  
16      issues when we say "the complaint."

17           Section 1.5. In this definition, section 1.5, it  
18      refers here to the farmers who have not exercised a  
19      right to be excluded by April 30th, 2013. I will -- I  
20      will revisit that.

21           Let me see if I will read -- some of these were  
22      read, so I will try and spare -- but if I take as much  
23      time to --

24           THE COURT: Take as much time as you want. We  
25      have all day, and this is your opportunity. So don't

1 worry about time.

2 JONATHAN HAAR: Okay. Well, thank you. Thank  
3 you. I don't want to be overly redundant, is all.

4 Remember when reading the released claims we need  
5 to keep in mind the expanded definition of the  
6 complaint. I basically went over that.

7 I notice it wasn't in the definition section. I  
8 thought that was a little unfair. Released claims is  
9 everything. Release -- released parties is everybody,  
10 their affiliates and their affiliates' affiliates.  
11 Suffice to say -- we have been through these  
12 definitions, so I guess I am comfortable with that.

13 Suffice to say, by the end of Section 1 we have set  
14 up a scenario where everyone -- where anyone who has any  
15 interest of any kind in the class members' farms --  
16 including, obviously, the class members themselves -- is  
17 absolving anyone who is in any way affiliated with the  
18 defendants or affiliated, as I said, with the  
19 defendants' affiliates. Remembering the expanded  
20 definition of the complaint, the issues at hand are  
21 essentially any question that would have ever arisen in  
22 the dairy industry.

23 So the defendants have requested eternal  
24 absolution -- that's in Section 6.1 -- and -- all right.  
25 I will move on there.

1           Section 3, notice to subclass. I think Mrs. Haar  
2 has that.

3           Section 4, I basically define the plaintiffs'  
4 subclasses.

5           Section 4.2 just speaks about the fairness hearing.  
6 Thank you.

7           The relative date of the agreement is ASAP. I  
8 apparently have some confusion here, and maybe you can  
9 clear for me, are we talking about 30 months from the  
10 date of this -- of, God forbid, the settlement, or are  
11 we talking about the December 31st of 2016?

12           THE COURT: The effective date?

13           JONATHAN HAAR: No, the end of the settlement  
14 period.

15           THE COURT: I am going to allow the attorneys  
16 to give their definition of it, because it's their  
17 agreement, and I will note that is an issue that you  
18 have and that needs to be decided as part of this  
19 proceeding.

20           JONATHAN HAAR: I was just a little confused  
21 because this one, I believe, says the 31st of December,  
22 2016. But I have also heard said 30 months. Whatever.  
23 It's -- it's not of great consequence.

24           Release and covenant to sue (sic) is Section 6:  
25 Upon the effective date, each of the releasing parties

1       shall have deemed -- shall deem to have and, by  
2       operation of judgment, shall have fully, finally, and  
3       forever released, relinquished, and discharged all  
4       released claims -- Ralph actually read all of this, so I  
5       will save it.

6           Section 6.1: We, the class, are asked to forever  
7       release -- we don't know exactly who, and we don't know  
8       exactly from what. I don't think this is reasonable.

9           Section 6.2 just drives the whole point home that  
10       we -- we give it all up without even knowing exactly  
11       what the "up" is. With regards to the last sentence of  
12       Section 6.2, Plaintiff subclasses acknowledge, and the  
13       releasing parties deemed to have acknowledged, and by  
14       operation of the judgment shall have acknowledged, that  
15       the foregoing waiver was completely, separately --  
16       was -- the foregoing waiver -- I'm sorry -- was  
17       separately bargained for and a key element of the  
18       settlement of which this release is a part.

19           Your Honor, with regards to what we mean as a  
20       class, as this waiver is a key element of this  
21       settlement, we are seeking denial of said settlement  
22       with prejudice.

23           With regards to everyone but the attorneys, the  
24       lawyers -- the money, rather, isn't really much worth  
25       speaking about, and the reason being, it represents

1       approximately 1 percent of the average Order Farmer 1's  
2       milk receipts. I get this generous estimate by taking  
3       the market administrator's daily average for the two  
4       months -- I have -- I have two letters with me, and they  
5       are from -- I think it's September, October, but they  
6       are fall months, which milk production is typically  
7       lower in the Northeast in the fall than in the summer,  
8       but I will use that number.

9           I round that number down -- the market  
10      administrator. I round the number down to 5600 pounds  
11      per day. I divide that by a hundredweight to get a  
12      hundred -- to get my hundredweights. I divide it by a  
13      hundred to get hundredweights, which is how we are paid.  
14      I multiply that by \$18. Now, we have been averaging  
15      well over \$20 for the last two-plus years. And I will  
16      divide what the lawyers' very generous \$4,000-per-farm  
17      estimate. And that gets me down to 1 percent of annual  
18      gross milk receipts. So we're talking about a one-time  
19      payment equaling 1 percent of their milk receipts.

20           Now, this average farm, milk production averages a  
21      little over 50 pounds per cow. So if we take that  
22      number, and we say 5600 pounds per day, we are looking  
23      at basically a hundred-cow dairy. That hundred-cow  
24      dairy, in addition to milk receipts, has 50 bull cows  
25      every year approximately, because your dairy herd is --

1       you are hoping to get your dairy to freshen on an annual  
2       basis. So there's some -- you know, obviously it's a  
3       natural process, so there's some -- doesn't work like it  
4       should in the textbook.

5           But, anyway, you have basically about a hundred  
6       calves a year on a hundred-cow dairy. And of those,  
7       approximately half are usually bulls. Sometimes that's  
8       up or down. But those are currently selling for over  
9       \$300 a head. If you took \$200 a head, you are looking  
10      at, what, another -- I wrote -- I did the math --  
11      another \$10,000 to the bottom line.

12           Cows are also bringing in excess of a hundred  
13       dollars -- a hundred pound -- I'm sorry. Cows are also  
14       bringing in excess of a thousand dollars a head. So  
15       let's say our dairy has a conservative cull rate of 25  
16       percent, and let's say they only bring \$800 a head. My  
17       last Holstein cull that I sent less than two weeks ago  
18       brought \$1200 a head, or she brought \$1200. So that  
19       conservative estimate yields another \$20,000.

20           This .1 percent does not take into account this  
21       other \$30,000, or the fact that if your cull rate's only  
22       25 percent, you also have 25 heifer calves that you can  
23       get rid of every year because you are replacing those 25  
24       cows that you are pulling out. It's a two-year time  
25       span, but that's the way the math works.

1           So that's what we are looking at. We are looking  
2       at a one-time payment of 1 percent of your gross milk  
3       receipts.

4           All right. Now we are going to get into Section F,  
5       which -- oh, no. Monetary relief -- conduct elements,  
6       I'm sorry. Section -- it's Section 7.3, is the conduct  
7       elements.

8           Now, over these conduct elements -- no, I will keep  
9       going. I'm sorry. Conduct elements. Monetary  
10      relief -- I just went through the monetary relief.

11          Settling defendants, in terms of this agreement,  
12       will not enter into any FSAs, new FSAs. The younger  
13       Mr. Haar established that it's not new FSAs that created  
14       the problem. So there's zero relief there.

15          Settling defendants agree, during the term of this  
16       agreement, no new agreements for the supply of raw Grade  
17       A milk or any renewal of existing agreements, not -- not  
18       that there's none of them, but they shall be presented,  
19       reviewed, and approved by the DFA board of directors  
20       prior to DFA entering into, renewing such agreement,  
21       presenting, reviewed, and approved by the DMS  
22       board -- it's the same thing but DFA and DMS. So it  
23       repeats the comment that they will not enter into any of  
24       those agreements.

25          This goes back to the negotiations. I asked that

1       board members needed to participate in negotiations of  
2       agreements. In my third declaration, which was filed on  
3       August 9th of 2013, I state in the DFA newsletters --  
4       newsletter, member update that I received, I am  
5       repeatedly told by the board of directors -- or told  
6       that the board of directors has received, they have  
7       reviewed, they have approved.

8           Never in my now-14-year tenure with DFA do I  
9       remember the board initiating, recommending, requesting,  
10       suggesting, or refusing any actions itself. The board  
11       of directors has not and will not direct the management.

12           Settling defendants -- Section (c). Settling  
13       defendants agree that they will, upon written request of  
14       any of their respected members who are located in  
15       Order 1, disclose a summary of the terms of agreements.  
16       This disclosure shall state whether the agreement is a  
17       full-supply agreement, the duration of the agreement, or  
18       any other material provision, provided its disclosure is  
19       permitted by the terms of said agreement.

20           Section (c) sounds like maybe we are going to get  
21       something here. But a little closer look reveals,  
22       number one, the overcommitted farmer needs to write in,  
23       and the boss knows you are writing to ask about the  
24       boss. Number two, he or she will get a summary, which,  
25       of course, to summarize we need to edit.

1           Number three, said farmer can only do this for the  
2 next 23 months if it's -- and I will just state this in  
3 terms of the 31st of 2016 -- December 31st, 2016. So I  
4 will just use the -- that's what I was working with. If  
5 it's 30 months, then we need to adjust that, but -- for  
6 the next 23 months, during which time whatever  
7 information the farmer gets -- and Alice spoke to the  
8 opportunity to get information -- we can't act upon.  
9 It's unactionable. We gave that away.

10           Fourth and finally, the last sentence provides the  
11 combine-size loophole: Provided its disclosure is  
12 permitted in said agreement. Section (c), no  
13 transparency, no relief.

14           Section (d). Settling defendants agree any  
15 cooperative member, affiliate, associate in Order 1 may,  
16 during the term of this agreement, terminate its  
17 relationship upon no more than 90 days without written  
18 notice.

19           I will use my 23 months, minus the three months,  
20 the 90 days, if the market share and -- the market share  
21 and FSS are not addressed, you have 20 months to find a  
22 new career. We haven't affected any of the key players  
23 in any way, Rick Smith at his own word.

24           (e). Settling defendants agree not to oppose a  
25 request by subclass counsel to unseal and release

1 materials submitted to the court. In connection with  
2 the plaintiffs' motion for certification of  
3 subclasses -- that's court docket number 388 -- and  
4 defendants' motions for summary judgment, court docket  
5 number 479 -- to the extent that the disclosure of such  
6 documents is not prohibited by settling defendants'  
7 obligations to third parties.

8 A couple things jump out with regards to (e). Why  
9 just stuff in connection with the two dockets? How  
10 about the whole record? This looks patently unfair  
11 compared to the exhaustive release. The last sentence  
12 effectively negates our efforts at disclosure anyway,  
13 that being obligations to third parties. It is very  
14 easy to look for obligations to third parties.

15 Section (f). Okay. All of these next sections  
16 need to be considered under the umbrella of fact that  
17 most of these conduct -- that cover most of these  
18 conduct elements, that being, number one, we are asking  
19 them -- DFA, DMS -- to review and act -- I think Joshua  
20 used this already -- that DFA, DMS to review and act on  
21 policies they have already renewed and acted upon and  
22 that they have already implemented these policies, and  
23 the Northeast Dairy Council is under no obligation,  
24 based on this settlement, to change anything.

25 So they are going to look at members' milk checks,

1       and if they feel in the mood -- Joshua had read the  
2       Ernst & Young disclaimer. I just wanted to mention to  
3       the Court that that was from our DFA -- I think it's a  
4       financial -- year-end financial statement they had  
5       printed that disclosure in there.

6           It will disclose -- actually, Joshua covered this.  
7       Disclosing the members, the identity of members of the  
8       board of directors. I guess -- I guess this will --  
9       this would be a change if they -- if they talked about  
10      their committees and checked their per diem rate.

11           Thanks.

12           DFA will post on its secure member website -- this  
13      is Section (ii). This is all under -- I think it's  
14      conduct elements.

15           (ii). DFA will post on its secure, members-only  
16      website, myDFA, an annual disclosure of all material  
17      related-party transactions, other than the sales or  
18      purchases of raw milk to or from affiliates,  
19      specifically broken out and identified per transaction,  
20      not aggregated, with the definition of "material,"  
21      "materiality" as involving an amount of \$120,000 or  
22      more.

23           (iii) also -- or Section (ii) here also equals no  
24      transparency; three \$100,000 transactions equals a  
25      \$300,000 transaction, but they're all still under

1       120,000. They are not going to aggregate. There's no  
2 transparency here. And if you did find something out,  
3 you still can't act on it.

4           DFA board members and senior executive management  
5 will continue to execute annual conflict of interest --  
6 why is this in here? This is something they do already.  
7 How can we be selling our rights and our opportunity to  
8 carry this to something reasonable, fair, whether it's  
9 settlement or trial? They just put in here things that  
10 they already do and expect us to thank them for it.

11           In addition, it's all subject to their whim.

12           Okay. Section (iv), (g): DFA will disclose to  
13 delegates at DFA's annual meeting financial information  
14 which shall include materially party -- shall include  
15 material related-party transactions as defined in 7(ii).

16           So that's the first loophole, that you can easily  
17 negotiate your contracts to be below the material  
18 number.

19           They are not going to aggregate. That's the same.

20           With the definition of "material" -- oh, this is a  
21 little different -- includes -- the definition including  
22 a transaction of more than \$5 million, excluding the  
23 sales or purchases of raw milk from affiliates.

24           We're in the milk business. This is what DFA and  
25 DMS are doing. This is the source of the -- this is the

1 source of the damages. How -- we are not talking about  
2 the milk business, why talk? There's nothing there.

3 Number (v). DFA auditors shall be selected from  
4 one of the nationally recognized accounting --  
5 accounting firms. They already do that. So again, it's  
6 here, and they already do that.

7 DFA and senior management and audit committee of  
8 DFA board will affirmatively represent that they are  
9 responsible for the preparation, integrity, and accuracy  
10 of DFA's annual financial report.

11 Again, we give away the right to do anything about  
12 their behavior.

13 All right. This is Section (j). In my particular  
14 copy, which I say apparently was filed, this (j) is  
15 special because it comes before (h). But -- DFA's  
16 Northeast Area Council will undertake a careful review  
17 as to whether changes are warranted in the election of  
18 area council members and delegates -- I will share  
19 something with regard to this a little further down --  
20 if the Northeast Area Council so recommends such changes  
21 will be implemented.

22 (h). Compliance with the terms of the settlement  
23 agreement will be monitored by the audit committee.  
24 There will be two independent advisors.

25 Now, advisors don't know -- don't vote, and they

1 have no power. And, in addition, I actually thought  
2 this might have something to do with my -- with my  
3 request for the board members to be present at  
4 negotiations for contracts for the purchase and sale of  
5 raw milk, but then I saw it was cut and pasted from the  
6 Southeast.

7 On the advisors will have expertise -- oh, and they  
8 are currently free from any other relationship with DFA.  
9 Is that for the term of the settlement? Are these  
10 future players? Are they former players? And they are  
11 going to report their views to the delegates at the DFA  
12 annual meeting. I was -- well, I already shared about  
13 Mr. Davitt complaining about the annual meeting  
14 delegates don't vote on milk policy issues.

15 Okay, (i) was the -- we discussed already about  
16 the -- I guess Ralph read the -- the antidiscrimination  
17 clause, that they are not going to discriminate against  
18 us for standing here and telling our story. Is this for  
19 the term of the agreement, or is this forever, as the  
20 release is, forever and ever, amen? And how does it  
21 work?

22 They take -- they take my milk. They tested my  
23 milk. I say it was good; they say it was bad. How do  
24 I -- it's my word against theirs. The milk's gone.  
25 What's my recourse? There's no -- there's nothing here

1 to protect me or defend me in any way from what -- I  
2 mean, I am not a lawyer, but it seems to me that  
3 there's -- there's nothing binding in any of this.  
4 There's no punitive terms or anything.

5 (j). This is the real (j): Settling defendants  
6 shall not enter or maintain any agreement or  
7 understanding, written or unwritten, with any  
8 cooperative that limits or restricts any form of  
9 solicitation of milk supplies from dairy farmers,  
10 including, but not limited to, any agreement that  
11 restricts contacting or approaching dairy farmers to  
12 offer more favorable financial terms, services, or other  
13 terms or conditions.

14 Again, there's absolutely nothing binding here.  
15 They have been doing this. They knew they shouldn't be  
16 doing it, as evidenced by the -- the Rick Smith comment  
17 that has been shared with this Court before. And is  
18 this for the -- I assume this is only for the term of  
19 the agreement. This is not binding forever, like our  
20 release is binding forever.

21 Settling defendants will have and maintain an  
22 ongoing antitrust compliance program.

23 They violated this. This was a subject that --  
24 although unactionable by this Court, Mr. Pierson went to  
25 great lengths to explain to the Court the defendants'

1 violation of the consent decree in DFA antitrust  
2 compliance guidelines and their core policies. This  
3 equals no change. They do it already.

4 And so we are on to the settlement fund. I think  
5 we have -- I think I have got that.

6 Okay. Opt-outs. I will -- I will look at  
7 opt-outs.

8 I have spoken to several farmers who are engaged in  
9 legal proceedings or contemplating legal proceedings.  
10 The original opt-out paperwork, I suppose, was sent  
11 sometime prior to April 30th, 2013. That's almost two  
12 years ago. When our distinguished counsel discussed  
13 damages, they don't consider the damages these other  
14 actions by class members may be seeking.

15 Some may have been started after the opt-out notice  
16 was sent. That was the case for Mr. Vaughn Sherman. He  
17 is out of -- out of Ithaca, New York. He is the largest  
18 organic producer east of the Mississippi, I am told.  
19 Two years ago when he had the option to opt out, the  
20 notice would have been an irrelevant piece of mail sent  
21 to a member of this class who probably works 80 hours a  
22 week. Is this fair? To steal away we don't know how --  
23 how many legal actions from this class?

24 Remember, the expanded definition of the -- of the  
25 complaint now covers every possible issue, essentially

1       every possible issue. This is a sweetheart deal for the  
2 defendants. But it is patently unfair to these absent  
3 class members, in particular.

4              Final point with regards to the settlement: The  
5 areas that are left to DFA's discretion need to be  
6 considered in the light of who we are dealing with.  
7 First, according to the Southeast area farmers I spoke  
8 with, the recent settlement did not really solve any  
9 problems and did not improve transparency.

10          One gentleman I spoke with was explaining -- he had  
11 not actually been able to keep up with checking the  
12 percentage of Order 1 milk, but he didn't think that  
13 they made a fundamental change in that. I don't know if  
14 you are familiar with how in the Southeast they actually  
15 took some money, and I believe it was \$9 million, for a  
16 couple of years and held it in escrow upon the fact that  
17 if DFA did not follow through on their commitment to  
18 redirect milk, to change the blending price -- because  
19 the Southeast is traditionally a milk-deficient area,  
20 and so typically the higher-value milk, the Order 1  
21 milk, would be consumed locally.

22          But apparently -- and I really don't know a lot of  
23 the ins and outs, but apparently the milk had been being  
24 rediverted to change the Southeast-area blend price.  
25 Well, this farmer's impression was -- and by the way,

1       most of these people asked me not to use their names.  
2       Where I could, I did, but for the reasons that I trust  
3       you are gathering, a lot of people are concerned.

4           He said that DFA is just going to take the  
5       \$9 million and distribute it to the class -- it's not  
6       their money -- and then they can do what they have been  
7       doing and it will just be easier for them to just make  
8       their cost-of-doing-business payment.

9           I am not sure if this was the same gentleman or  
10      another one, talked about recent upset victory,  
11      Southeast Area Council. DFA approached the farmer who  
12      had won and explained that if he bumped the man who he  
13      had beaten, that his area would lose its representation  
14      on the corporate board. Apparently the gentleman who  
15      was the Southeast Area Council board member was also on  
16      the corporate board. And I am not that familiar with  
17      the bylaws, but I am assuming, based on the comment,  
18      that if you are not on a council, you can't be on the  
19      board.

20           And so he was -- whatever -- whatever the case,  
21      however that was explained, the bottom line was the  
22      winner was convinced not to take his place on the  
23      council. DFA then removed one council seat in the area  
24      to consolidate the power of this one person and then  
25      voted to extend their terms from two years to three

1       years. So much for grass roots representation.

2           This organization is not member-run. And this  
3 proposed settlement is inadequate to cause any change in  
4 that. DFA cheats. I just explained that.

5           Another example: Rick Smith was -- an agreement  
6 was reached with Rick Smith, the -- Rick Smith -- I  
7 assume you are familiar with Rick Smith -- with  
8 scheduled meetings across the -- I don't know his title  
9 at the moment -- across the Southeast.

10          Apparently Mr. Higgins and Mr. Foy were supposed to  
11 be at the one that was scheduled for July 11th, 2013, at  
12 the Best Western Hotel on Morland Drive in Statesville,  
13 North Carolina. They didn't make it, which is just as  
14 well because the hotel was closed for renovations.

15          But if you went past the "closed" sign, you'd find  
16 there was a meeting going on, two guest rooms with a  
17 partition removed, to quote the farmer I spoke with,  
18 without air conditioning, July in North Carolina.

19          A man was setting up video equipment. Rick Smith  
20 showed up late and complained about being videotaped.  
21 He said, "Not that I really care, it's just unusual."  
22 He gave his, to quote the farmer again, canned speech,  
23 and left. The farmer I spoke with then went and asked  
24 the cameraman, who was packing up, "Who paid you? Why  
25 are you here?" He said, "Oh" -- the cameraman said,

1        "The guy who spoke hired me. It was a last-minute  
2        thing. His secretary called last night."

3              Another Southeast area farmer I spoke with was a  
4        DFA delegate, explained -- he learned about the rule --  
5        that was the one that, again, the younger Mr. Haar  
6        shared about the -- they apparently had a rule change  
7        where you can't just go to your council meeting, as an  
8        owner. You need to make an appointment, you can state  
9        your case, and then, to quote this guy, you can leave.  
10       You can vent and leave. That's what he said. And they  
11       will close the door behind you and have their meeting,  
12       close quotes. The farmer told me, this is Rick Smith's  
13       idea of transparency. DFA lies.

14           A little closer to home, I have a letter dated --  
15       and unfortunately I missed the tutorial about the -- how  
16       to use the -- earlier, but I have a letter dated May  
17       4th, 2012. Originally I was just going to hit some high  
18       marks, but I would like to read the whole thing, and  
19       it's fairly short:

20               "Dear Producer:

21               "The United States has been showing significant  
22       increases in milk production, particularly since  
23       January. The average production year to date has  
24       grown" -- "has been in excess of 4 percent, which has  
25       not occurred in many years. U.S. can normally grow at a

1       rate of 1 and a half to 2 percent and see that rate of  
2       increase absorbed through normal sales growth. Growth  
3       beyond these rates, which we are now experiencing, put  
4       downward pressure on" -- "on our price.

5            Unless there is extraordinary growth and demand,  
6       the difference between 1 and a half and 2 percent and 4  
7       percent, and the early" -- "and the early flush due to  
8       the mild winter, have placed a significant burden on  
9       milk for balancing."

10          The "flush" refers to the cows being turned out on  
11       grass in the spring and actually even longer days  
12       contribute to more milk. Maybe they don't like this  
13       weather. I don't know.

14          "The stress on balancing is not unique to our area  
15       but similar to other parts of the United States. For  
16       example, in California, some farms have produced milk  
17       made over a certain base level are going to be charged  
18       10 cents per hundredweight for balancing cost.  
19          Other groups in the mideast, in Ohio, Michigan area, had  
20       to dump milk because it had no place to go. In  
21       Michigan, Indiana area, farms paid 80 cents plus in  
22       March for balancing and will probably do so again in  
23       April.

24          "Three or four other cooperatives west of the  
25       Mississippi have implemented base excess plans. We

1 believe those plans are inappropriate for our geography  
2 based on the fact that there's significant process plant  
3 expansion underway. We will need all the extra milk we  
4 have plus some within 12 to 36 months."

5 We just said the area is different, and this is a  
6 high-level, high-paid DFA -- or this is DMS -- I'm  
7 sorry -- DMS officer.

8 And the next sentence starts, "Here in the  
9 Northeast, it's no different." I thought he just said  
10 it was different, but anyway. "Our plants are brimming  
11 full of milk, which is higher than normal for this time  
12 of year. Normally extra milk will be balanced in  
13 the range of 2.50 per hundredweight below our regular  
14 pricing. This year, that cost is approximating \$6 per  
15 hundredweight below our regular pricing. These costs  
16 are clearly way above the normal costs we handle  
17 throughout the year.

18 "In light of where we are, we will be making  
19 premium adjustments to address the costs associated with  
20 balancing. We will continue to seek all avenues to  
21 reduce our balancing costs and keep marketing costs  
22 down.

23 "Sincerely, Sharad Mathur." He is the chief  
24 operating officer of Dairy Marketing Services, LLC, and  
25 that's May 4th, 2012.

1           This all sounds reasonable, and if you were an  
2 Order 1 farmer from anywhere but central New York, you  
3 might believe it. But I live five miles up New York  
4 State route from the Chobani plant. I would actually  
5 like to digress on that a little because, having reread  
6 this -- and just last night I thought, it sounds a lot  
7 to me like fear-driven extortion.

8           They're dumping milk in the Midwest, pouring your  
9 product down the drain. What if we can't find a home  
10 for your milk? Don't worry. You just give us your 10  
11 cents and be quiet -- it actually was 30 cents per  
12 hundredweight. They ended up charging us for about five  
13 months -- it was for several months, at least, that  
14 spring.

15           So, he's talking about how there's so much milk. I  
16 live five miles up New York's State Route 8 from the  
17 Chobani plant, Chobani yogurt thing, in South Edmeston.  
18 I know many people who work there. At the time of this  
19 letter, the Chobani plant was experiencing explosive  
20 growth. We work on both sides of Route 8. We saw the  
21 trucks coming and going incessantly. Hamdi Ulukaya, the  
22 founder of Chobani yogurt, was looking for 90 to a  
23 hundred loads of milk per day. DMS could not or would  
24 not come up with enough milk for him.

25           Not finding enough milk in our area was one of his

1 primary reasons for moving much of his operation to  
2 Idaho. So I'm talking to my neighbors who work for  
3 Hamdi Ulukaya, and they are saying, "Ah, we can't get  
4 enough milk," and I am getting a letter from the chief  
5 operating officer of LL -- of DMS telling me, "We gotta  
6 charge you 30 cents to balance this month." DFA lies.

7 A little more recently, little more recently:

8 I have here a letter from Mr. Brad Keating dated  
9 October 25th, 2014, in which he states -- and I won't  
10 read this whole one -- "Back in July we communicated to  
11 you about the conditions and circumstances we're facing  
12 in the marketing area: the need to implement and make  
13 the market adjustment on the check to help defray and  
14 recover the costs of milk and the need to implement the  
15 market adjustment on the check to help defray and  
16 recover the costs of milk balancing."

17 It says, dealing with the same issues, "We are now  
18 experiencing increased milk production in the region."  
19 October 25th, 2014.

20 I have the milk marketing administrator's letter  
21 here dated September 2014. We received this after the  
22 month. It's reporting on the facts of September. Milk  
23 market administrator shows here pooled milk receipts  
24 total 2.072 billion pounds, a decrease of 2.1 percent  
25 from last month on an average daily basis.

1           Somebody is either wrong or lying. Well, maybe  
2 not. Let's just say he is quicker than the market  
3 administrator and give -- give him the benefit of the  
4 doubt. Maybe he is informed by more recent data. Well,  
5 the October newsletter, which came out in November,  
6 states pooled milk receipts did increase .1 percent from  
7 last month.

8           So after two months in which the -- in the middle  
9 of which Mr. Keating said milk production is rising, we  
10 are still at a net loss from August of 2 percent. We  
11 have been told all summer long that there's too much  
12 milk; they are dumping milk. There's too much milk;  
13 they are dumping milk. And we have also been paid  
14 record high prices.

15           I am saying to everybody -- excuse me -- who tells  
16 me there's too much milk and they're dumping it, if  
17 there's too much milk and they are dumping it, how come  
18 we are not getting \$16 or \$14 a hundredweight? You are  
19 getting record high prices, and we are being told that  
20 there's too much milk. Got that skeptical stripe --  
21 strip, I guess. I say, "Show me." You know, "Show me."

22           I have a neighbor of mine whose cousin is a milk  
23 truck driver, telling me, "Oh, Christmas they had to  
24 dump the milk." I said, "Your cousin, he drives a  
25 truck, did he open the valve?"

1           "Well, no, they put it in the silo at the milk  
2 plant."

3           And of course they stripped the value. They -- I  
4 don't know. Perhaps they are dumping water after they  
5 get out all the protein and fat. But they're not  
6 dumping milk, and it's illusionary to -- it's deceptive  
7 to tell us, and they are our fiduciaries, and they are  
8 telling us that they are dumping milk. And in the  
9 meantime, they have been hitting us up for 50 cents a  
10 hundredweight. Contrary to Mr. Keating's assertion, he  
11 has been charging 50 cents a hundred pounds of milk  
12 since October. It was 15 cents a hundredweight since  
13 July.

14           Assuming -- you can do a little math again.  
15 Assuming 60 percent market share -- which is  
16 conservative; in my neighborhood, it's, I'm sure, over  
17 90, at least closer to 90 -- of approximately 2 billion  
18 pounds in the order, one point -- that would be 1.2  
19 billion pounds, forgetting the 15 cents from July  
20 through -- through, I think it was October they  
21 started -- this is ongoing right now.

22           So forgetting that, let's just look at the 50-cent  
23 market adjustments, four months. We have 1.2 billion  
24 pounds divided by the hundredweight. It's 12 million  
25 hundredweights times -- is \$6 million a month times four

1       months so far. That's \$24 million this fall, in this  
2       order, because Mr. Keating says milk production is going  
3       up.

4           All to say, these people who are claiming to  
5       represent us as our co-op leaders and are assuring us  
6       they will review and consider making changes? Well,  
7       they won't. They will use every loophole, and there are  
8       many in this inadequate, unfair, and unreasonable  
9       proposed settlement. The fact is, the arbitrary nature  
10      of much of the relief combined with the vast loopholes  
11      and brief period of opportunity to take action, coupled  
12      with the expansive relief which moves our -- which  
13      removes all our risk going forward -- oh, I'm sorry.  
14      Let me start that over.

15           The fact is in the -- the arbitrary nature of much  
16      of the relief, combined with the vast loopholes and  
17      brief period of opportunity to take action, coupled with  
18      the expansive release, removes all of our risk going  
19      forward. This proposed settlement gives away so much  
20      and guts so little that we would be better off as a  
21      class going to trial and losing, for at least the  
22      defendants would not be able to get the release. We  
23      would lose 1 percent of one year's gross milk receipts,  
24      but they would not get their release.

25           Contradict the proposed failure of relief with the

1 following: Recognizing DFA is a farmer-financed  
2 international milk-processing corporation. Gone is  
3 Capper-Volstead protection. Gone is DMS. Gone is  
4 GNEMMA. But these become recognized as tools of the milk  
5 mafia, which is, in fact, what they are. That would  
6 equal release.

7 My final subject: There has been filed with this  
8 court a letter opposing settlement. I have the  
9 unparalleled honor of speaking with the author, Maryanne  
10 Miller. She said she'd like this case to go to trial.

11 She also questioned the class definition of  
12 Order 1. She's always pooled in Order 1. The market  
13 administrator considers her an Order 1 producer.  
14 Apparently, and I will put this in quotes, Professor  
15 Rausser says it's possible that the unregulated areas  
16 adjoining Order 1 are part of the relevant market, and  
17 that's part of your opening comments from -- from the  
18 class certification hearing on September 26th.

19 I had asked for and never received an answer from  
20 my counsel, satisfactory or otherwise, as to why, after  
21 the initial Dean settlement talks and after mediation,  
22 the definition of the class was changed, excluding named  
23 plaintiffs, Donna Hall and Vince Neville. And I don't  
24 know how many other farmers.

25 With regards to the primary reason, however, that I

1 speak of Maryanne Miller, her location is irrelevant. I  
2 speak of her because the actions and attitudes she  
3 demonstrates are typical to this class.

4 What she did not mention in her letter is that she  
5 and her sisters are the only ones working their  
6 third-generation farm. Maryanne is 65. Her sister is  
7 69. Her sister should have had her knees replaced back  
8 in 1999, but she won't do it, Maryanne says. She has to  
9 stand bending over in order to milk the cows.

10 The neighbors tell them they should switch to beef,  
11 but she says, "We've always milked cows." My  
12 grandfather milked cows here until he died in his 90s.  
13 Her father did the same. He has been dead 11 years.  
14 She says, "When my sister and I come in for supper,  
15 about 10 o'clock," after she sets a while, takes a while  
16 for her to get up. But she says she just has to keep  
17 moving, keep fighting.

18 Maryanne writes, "I strongly object to this  
19 settlement, and I only wish I could attend this hearing.  
20 Due to a full farm schedule which I have endured for the  
21 past 45 years, it is not possible for me to attend."  
22 When I consider these good women, in that old barn,  
23 amongst their cows, bringing forth food to feed this  
24 nation, and I think of the great honor I have to  
25 represent them here, and I think of how these poor,

1       pathetic lawyers would sell their opportunity to  
2       represent these good women and, worse, they would sell  
3       these women out for a measly \$800 an hour, your Honor,  
4       we are fighting for more than \$800 an hour here. We are  
5       fighting for the truth.

6           And at the end of the day, the truth matters. The  
7       truth is, this is a betrayal. This is not a settlement.  
8       My only question for my counsel is what more could you  
9       have given away.

10          Your Honor, please do not join DFA and the  
11       plaintiff counsel in our betrayal. Thank you.

12           THE COURT: Thank you.

13          We are going to take our lunch break at this time,  
14       and we will come back at one, hear from anybody else who  
15       wants to speak. As I noted, I have some questions for  
16       the attorneys, and we will hear from them.

17          Anything to bring to my attention before we take  
18       our lunch break?

19           MR. PIERSON: No, your Honor.

20           THE COURT: All right. Thank you.

21       (Court was in recess at 12:07 p.m.)

22       (The following was held in open court at 1:05 p.m.)

23           THE COURT: We are back on the record in Alice  
24       Allen, et al., versus Dairy Farmers of America, et al.,  
25       and we are in our fairness hearing.

1                   Did anybody else want to speak?

2                   CLAUDIA HAAR: My name is Claudia Haar.

3                   That's H-a-a-r. And I am also a class representative.

4                   Thank you for your patience.

5                   As I speak, I am going to be referring to Mr. Haar  
6                   as "Jonathan," just so that there's clarity between him  
7                   and my son Joshua, rather than saying Mr. Haar, Sr., and  
8                   Mr. Haar, Jr.

9                   Also, I want to offer to the Court my deepest  
10                  apologies because I did not type Mr. Haar's speech. So  
11                  it might be a little challenging for the reporter to be  
12                  able to decipher it. After 30 years, I still have a  
13                  hard time, so I had to get --

14                  THE COURT: Well, I had an easy time hearing  
15                  him, so don't worry about it.

16                  CLAUDIA HAAR: Okay. Good. Well, because his  
17                  writing is the part that -- that I'm sorry to say I  
18                  didn't take care of.

19                  It is a privilege to speak directly to the Court  
20                  today for several reasons. First, it is a great  
21                  privilege to be the voice for fellow farmers who are  
22                  afraid to openly oppose this so-called settlement.

23                  Second, as a class representative for the last four  
24                  and a half years, there have been times during these  
25                  proceedings when I have been exceedingly frustrated with

1       our lack of representation, and I believe a farmer's  
2 perspective would have given clarity to our case and  
3 answers your Honor's questions.

4           Third, my husband and I, as dairy farmers, have  
5 personally experienced some of the illegal behaviors of  
6 DFA, DMS.

7           Lastly, I have the perspective, as do the other  
8 class representatives, of one having seen the unredacted  
9 complaint and all of the allegations in its entirety.

10          Your Honor, I now direct your attention to  
11 Exhibit A, which everyone has. Please allow me to read  
12 some portions of this e-mail Ralph and Garret Sitts,  
13 Richard Swantak, and Jonathan and I sent to our  
14 attorneys after this Court denied the initial  
15 preliminary approval of this proposed settlement.

16           "In the unfortunate circumstance that your renewed  
17 motion would succeed in bringing about a fairness  
18 hearing, this would result in class counsel and  
19 defendants arguing together against class  
20 representatives in favor of a settlement which provides  
21 absolution for defendants, millions for class counsel,  
22 and pennies for the farmers you signed on to represent.  
23 This would demonstrate to the Court the collusive nature  
24 of this settlement. Let's avoid that situation."

25          We then offer a suggestion, and closed with "Your

1       friends and fellow litigants."

2           Our suggestion was ignored. When betrayal set in  
3       and it was clear that the last thread of trust we placed  
4       in counsel was met with disdain, we, as class  
5       fiduciaries, knew we all had to speak on behalf of the  
6       12,000 farming families we agreed to represent. I know  
7       we have heard that there are only 9,000 dairy farms in  
8       Order 1, however the market administrator reports over  
9       12,000.

10           Just because our dairy farmers in the Amish  
11       community did not file claims in the Dean settlement  
12       does not mean that they should not be counted. They  
13       suffer from the oppressive monopsony, as do we all. I  
14       am friends with many in our local Amish group. They are  
15       always interested in the status of this case and ask  
16       about these proceedings. They greatly appreciate your  
17       diligence as guardian of this class.

18           Your Honor, with your permission, I would like to  
19       first address farmers' concerns about the settlement  
20       notification itself, the packet, and then I will get to  
21       the settlement.

22           There are a variety of farmer experiences woven in  
23       to help illustrate the points. I am trying to keep it  
24       brief, but there is a lot of material, and I think you  
25       should be made aware of it.

1           With regard to the settlement notification, here is  
2 what farmers have told us: Some had not received a  
3 packet, simply a notice that they would be receiving  
4 one. They were not aware that there was an opportunity  
5 to oppose the settlement.

6           Those that did receive a settlement packet wanted  
7 to know why the actual settlement itself was not  
8 included in it for them to read. I tried to explain  
9 it's probably not usually procedural. They were not  
10 interested in that excuse. Many farmers do not own a  
11 computer or do not know how to operate one. The average  
12 age of dairy farmers -- I believe Mr. Swantak said  
13 this -- is 57 years old. That's not to say that you  
14 can't learn things, but they don't need a computer in  
15 their everyday work, so learning to use one has not been  
16 a priority. And with the immense implications with the  
17 settlement, they just felt that it should have been  
18 included right there in a hard copy for them to read.

19           Also, the Amish avoid this type of technology  
20 altogether, so it's very difficult for them to be able  
21 to get the settlement. Even if they were not going to  
22 claim, they still would have had an opportunity to read  
23 it and perhaps send in letters, like some of the Amish  
24 community did.

25           Being that the packet was sent out using -- using

1       our money through the proposed settlement fund, farmers  
2       wanted a hard copy, which would be more useful to them,  
3       especially to read the release of what they would be  
4       giving up.

5           Number three. Most farmers are fearful to openly  
6       oppose this proposed settlement. I spent a little time  
7       on this, so I will try not to get too lost. They told  
8       us that to send a copy of a letter in opposition to this  
9       proposed settlement to DFA, DMS defendants, which is  
10       what was part of the process, would be to send a letter  
11       of complaint about your boss to your boss. They feared  
12       possible repercussions, which some had already  
13       experienced, just for questioning our so-called  
14       cooperative.

15           Your Honor, please allow me to explain how dairy  
16       farmers are compensated for their work, to better  
17       illustrate our predicament. I know we have heard a lot  
18       about PI count of bacteria and all these different  
19       things, but having a teaching background, I thought it  
20       would be helpful to actually -- let's look at these  
21       things, what is your milk analysis, and that's what I am  
22       going to be doing. Forgive me if you are already  
23       familiar with these items.

24           So to do so, I would like to show you a copy of a  
25       milk analysis sheet, which every dairy farmer receives

1       on a monthly basis, and then a corresponding paycheck  
2       for the same period so that you would be able to see,  
3       okay, this is what your -- the consistency of -- what  
4       makes up your milk and then this is how you are being  
5       compensated.

6               Okay. So please refer to Exhibit B while I attempt  
7       to use this machine.

8               THE COURT: You say "this machine." It's easy  
9       enough for a judge to use, so --

10              CLAUDIA HAAR: I love when you say that. I  
11       have used that phrase at home with my own children,  
12       "Easy enough even Mom knows how to do it."

13              THE COURT: Okay.

14              CLAUDIA HAAR: Okay.

15              (Brief pause.)

16              CLAUDIA HAAR: Technical difficulties. Please  
17       stand by.

18              (Brief pause.)

19              CLAUDIA HAAR: As you can see, what you are  
20       looking at is the front side of our butterfat protein  
21       OS, which is other solids, results from December, but I  
22       am jumping ahead.

23              At present time, DFA, DMS analyzes or -- we call it  
24       tests our milk. This, in itself, I would say, is a  
25       questionable business practice. Any other industry

1       dealing in weights and measures is externally regulated  
2       by government agencies. For example, it's not  
3       appropriate for gas stations to calibrate their own gas  
4       pumps being that their measure is used in the  
5       calculation of the purchase of fuel. This is why we see  
6       a seal from the state on gas pumps verifying that they  
7       have been inspected and that they are -- have integrity  
8       with regards to what they are measuring.

9           So the fact that DFA, DMS measure -- measures the  
10      quality of our milk and our components, that's why I am  
11      trying to emphasize that this is a very serious matter,  
12      and it's questionable because they are the ones who are  
13      going to be compensating you.

14           So farmers are primarily interested in butterfat  
15      and protein levels in their milk because these  
16      components make up the largest portion of our  
17      compensation, as we will see when we look at the milk  
18      check.

19           So I am just going to point this out here. Okay.  
20      On the left here, I am pointing to the dates. Actually,  
21      you can see that date, all the way down. This is for  
22      December.

23           Your next column, moving to the right, it says  
24      "Bfat" is butterfat. So that's your percentages. You  
25      hear about two percent milk people buy? And that sounds

1       like it's really low. Well, probably the most is going  
2       to be five percent, so it's not -- it's not too -- too  
3       different.

4           The next one is your protein levels. The next one  
5       is your other solids that are in the milk. And the  
6       MUN -- I don't remember what that one is about, but they  
7       don't -- oh, no, I'm sorry, the milk, urea and nitrogen.

8           Okay. Now I am going to move this up, and you can  
9       see the top chart -- it's a little bit confusing. The  
10      butterfat is, I believe, the solid bars, and the other  
11      solids are on the top. Mr. Haar didn't explain this to  
12      me, but I am a little nervous. Anyway, the main thing  
13      that I want you to see is that farmers are concerned  
14      with their butterfat and protein levels.

15           Okay. So if a farmer starts feeding his cows extra  
16      corn silage due to an overabundant harvest, then he  
17      should see an increase in his butterfat because that  
18      corn is going to be stored as energy, so the fat should  
19      go up.

20           However, this was not the case with a fellow dairy  
21      farmer who spoke to me. He was suspect that DFA's milk  
22      test was not accurate. He called his field  
23      representative to come out and test his milk under the  
24      guise of checking the PI count, which I will explain the  
25      PI count.

1           When the field rep arrived and took the sample, he  
2       asked the farmer, "What test did you want me to run?"

3           " Why don't you just run 'em all," the farmer  
4       replied.

5           When the test came back, the butterfat component  
6       was 4.1 percent. Later that day, the milk truck came to  
7       pick up the farmer's milk, and like I said before, every  
8       time the milk truck comes, an individual sample is taken  
9       of that farmer's tank. So of course he took the usual  
10      sample. That test showed up that the butterfat  
11      component was only 3.5 percent.

12           Now I realize 3.5 percent, 4.1, doesn't seem like a  
13       big difference, but when we look at the paycheck, that's  
14       where the rubber meets the road. The sample the truck  
15       driver takes is the one that's used to determine the  
16       farmer's pay price. This farmer had to argue with our,  
17       quote, cooperative to be reimbursed for some of his lost  
18       revenue.

19           Okay. So now I am going to put up Exhibit C. This  
20       is the other side of the milk quality test. So the one  
21       side you have your components of your fat protein, other  
22       solids. On the other side, you have your quality.  
23       Okay. So let's walk through this.

24           THE COURT: So just a minute.

25           CLAUDIA HAAR: Sure.

1                   THE COURT: No emergency. We are just fixing  
2 the monitors for people who can't see them.

3                   CLAUDIA HAAR: Oh, okay.

4                   THE COURT: Okay. Keep going, please.

5                   CLAUDIA HAAR: Sure. Thank you.

6                   On this exhibit we see -- and I apologize. I had  
7 to write at the top. I didn't get to do fancy sheets,  
8 but we had baby lambs and they were in the house, which  
9 was distracting.

10                  Okay, on the far left we have the date here, and  
11 then our first column, this shows a supposed quality  
12 test result. The first column to the right of the date  
13 column is titled "PLC/PAC/ML." This shows your milk's  
14 bacteria count, which is related to the cleanliness of  
15 your facility and equipment.

16                  The second column to the right, titled "Optical  
17 Cell Count," measures your milk's somatic cell count,  
18 which is related to the health inside your cow's udder.  
19 Older cows tend to have a higher somatic cell count.

20                  The third column to the right is titled  
21 "Preliminary Incubation," which you have heard us refer  
22 to as our milk's PI count.

23                  DFA, DMS started using this test around 2005. We  
24 were told that consumers wanted to be able to leave milk  
25 out for an extended period of time. To this day, I have

1       not found one person that has this desire. The nature  
2       of milk is that it is perishable, and leaving it  
3       unrefrigerated will hasten its spoiling. These facts  
4       have not escaped consumers.

5           The preliminary incubation test is conducted by  
6       leaving a sample of milk unrefrigerated for 24 hours.  
7       You can imagine the bacteria level of this sample, and  
8       then they measure it.

9           The PI count is affected by environmental  
10      conditions completely beyond the control of the farmer,  
11      as our field representative explained to us. Our field  
12      representative said, you know, you try to keep things  
13      clean and neat, which affects your bacteria, but  
14      essentially, because it's exposed to environmental  
15      conditions, you can have a high PI count and there is  
16      nothing that you have done to contribute to that.

17           THE COURT: I would assume if the testing  
18      environment was warmer versus colder, that, in itself,  
19      would have a --

20           CLAUDIA HAAR: I am totally in agreement.

21           Our field representative still claims to this day  
22      that the highest PI count for the month would be  
23      dropped, as we were originally told. But if you look at  
24      the bottom of the PI column, to the December average,  
25      which would be over here -- I don't know if you can see

1       that -- you will notice the highest PI count was  
2       included to arrive in this calculation.

3           I would like to point out that none of our milking  
4       practices were changed during this period. In other  
5       words, we didn't -- we milked our cows every day the  
6       whole month of December exactly the same that we had,  
7       and yet we have such an erratic range of data.

8           Because DFA, DMS have linked all three tests --  
9       that would be the bacteria, the somatic cell, and the PI  
10      count -- we did not qualify for any premium during this  
11      month. It used to be that if you kept your bacteria  
12      within the range you can see -- let me point to the  
13      bottom. Let's see. Let me move it up a little bit.

14           Okay. On the bottom you see that there's a range  
15      here of excellent, good, fair, poor, unsatisfactory.  
16      And then they have the coinciding numbers for that  
17      column to say how your milk ranks.

18           It used to be that the levels -- let's see where I  
19      am. Just a moment. Okay. No, that's pretty much the  
20      point I was going to make about that. Just that you  
21      can -- oh, no, about the three columns. Okay.

22           So it used to be that if you did well and your  
23      bacteria -- let's say our bacteria was excellent,  
24      between zero and 5,000. Okay, then you would get a  
25      price premium, let's say maybe 20 cents extra per

1        hundredweight for that month. And then if you did more  
2        poorly in the somatic cell, maybe you were only good or  
3        fair, then you might not get that price premium, and so  
4        they used to be done independently.

5            But now they are linked all together, which is  
6        significant because if the preliminary incubation could  
7        be tampered with, then that means that those farmers  
8        would not receive any price premium over the top.  
9            However, the co-op is still able to market that milk and  
10        get the price premium that they want from the  
11        marketplace. So essentially they're skimming off the  
12        top, not to be redundant. Okay.

13           I would like to now turn to Exhibit D. This is the  
14        corresponding milk check that shows how Mr. Haar and I  
15        were compensated for our milk. At the top you can view  
16        all of our milk analysis information. So basically they  
17        shrunk what we just were looking at in Exhibit B and C.  
18        Exhibit B data is on the left, while Exhibit C data is  
19        on the right.

20           Below this section is the pricing information.  
21        Please follow the butterfat and protein lines all the  
22        way to the right, while I try to point at the same  
23        time -- here we go -- all the way to the right to see  
24        that these two components contribute the largest  
25        monetary compensation of our payment.

1           Your Honor, you may have been flooded by 10,000  
2 letters and/or requests to speak in opposition to this  
3 proposed settlement if farmers were not acutely aware  
4 that DFA, DMS has the ability to directly affect their  
5 paycheck by controlling their milk testing.

6           This point was reinforced when I met a perfect  
7 stranger on January 3rd of this year. We were on our  
8 way to Jonathan's mother's 90th birthday celebration.  
9 We stopped in Price Chopper to pick up some last-minute  
10 items. Jonathan and I split up in the store to be more  
11 efficient, and he handed me a copy of our letter to  
12 alert farmers of this proposed settlement and the  
13 effects it might have on them.

14           This is Exhibit E. So this is a letter that we had  
15 put together jointly -- you can see on the second page  
16 of it -- with Ralph and Garret Sitts and Richard  
17 Swantak, because once the notification had gone out  
18 about the settlement, we felt it was our responsibility  
19 and duty to let farmers know, "Here's something you  
20 really need to pay attention to," especially because it  
21 was through the holiday season, which is challenging in  
22 terms of time.

23           Okay. So Jonathan hands me one of these letters  
24 and says, "Just look for a farmer." That's what he  
25 said. I was successful in picking out an older farmer

1       in his well-worn Carhartt overalls and jacket and his  
2       well-worn hands too. After patiently listening for a  
3       minute, his immediate comment to me -- this is the first  
4       thing he said -- "Aren't you worried about your somatic  
5       cell count?"

6           Now, why would he say that if he didn't recognize  
7       the significance of DFA, DMS being in control of our  
8       testing? As a retired, life-long dairyman who now  
9       raises beef, this man knows the game all too well and  
10      was concerned for us.

11           Farmers have also been reticent to openly oppose  
12       this settlement because DFA, DMS controls the milk  
13       testing of every tractor-trailer load of milk. If they  
14       say that your farm has contaminated a load, then you  
15       have to pay for that load, approximately \$20,000 at the  
16      current milk price.

17           In other words, your sample that's taken from your  
18       farm, they analyze that, and all of your milk gets  
19       sucked out of the tank, goes into the big tanker, and  
20       depending upon if it's a smaller truck or the full-sized  
21       tanker -- I believe the full-sized tanker is 90,000 --  
22       I'm not exactly sure, but it holds a tremendous amount  
23       of milk, suffice to say.

24           And so if your milk -- like let's say you had to  
25       treat a cow that had an infection, so you treated him

1       with some penicillin, you were supposed to withhold that  
2       milk until that penicillin comes through the cow's  
3       system. If, by accident, the cow kicks the pail and  
4       some of that milk goes into your milk and contaminates  
5       it, or if you put that cow's milk in by accident because  
6       you forgot, then that milk of your milk tank, when it  
7       goes into the larger milk tank, it contaminates all of  
8       that milk. Okay. So that's why you're responsible for  
9       the full value.

10           Usually by the time the farmer is informed, the  
11       milk has already supposedly been dumped, so you cannot  
12       take an independent sample. I say "supposedly" because  
13       there's been many people that have had this experience  
14       where they are told by DFA or DMS, "Your milk  
15       contaminated a tanker load of milk, and so you need to  
16       pay." That milk is gone, so you cannot go and try to  
17       get an independent sample. It's their word against your  
18       word.

19           And I think that's why -- I think it was Mr. Ralph  
20       Sitts had mentioned about the \$20,000 that we would be  
21       getting as class representatives. "Oh, you know, that's  
22       a big amount of money." That can be gone like that. So  
23       the money is not an issue.

24           Another reason that farmers are apprehensive to  
25       openly oppose this proposed settlement is because of the

1 monopoly that DFA, DMS hold on the milk market. I spoke  
2 to a farmer who was a partner owner of a 2,000-cow  
3 dairy. He wasn't sure if he should speak out against  
4 this settlement. "Where would I sell my milk if they,"  
5 meaning DFA, DMS, "take away my market?"

6 I assured him saying, "I don't condemn you.  
7 Whatever you decide. I know you have a lot of families  
8 depending on you." We can always eat venison and eggs.  
9 We sell eggs also, so we have a lot of eggs. The  
10 farmer -- this farmer, along with so many, asked me to  
11 please not name them.

12 Jonathan and I have experienced harassments by DFA  
13 since we became involved with this lawsuit. We started  
14 having multiple inspections at -- when -- at times when  
15 you normally wouldn't. You would have one inspection,  
16 and you passed; you go on. But since we signed up as  
17 class representatives, that hasn't been the case.

18 And we started having these multiple inspections  
19 particularly before Jonathan's deposition and prior to  
20 him speaking to the Court. We never could figure out  
21 exactly how defendants seemed to know about these  
22 events. It seemed like it was too much of a  
23 coincidence.

24 For the first time ever, we were threatened to be  
25 dropped by the cooperative when our milk inspector

1 complained about the excessive mud around our barnyard  
2 just after Hurricane Irene. At that time, we were  
3 shipping good to excellent quality milk, so here all of  
4 the scientific proof is that your milk is -- is  
5 excellent quality, and yet he came to the farm and he  
6 saw the mud, which I believe Rutland had quite a time  
7 with that hurricane, you know, these -- these items are  
8 beyond our control.

9 Fellow farmers were not able to get milk poundage  
10 information -- okay, this is -- I am going on now. That  
11 was a long section having to do with why farmers would  
12 be reticent to bring up objections.

13 Now I am going on to my next point, which is about  
14 fellow farmers were not able to get milk poundage  
15 information from the market administrator telephone  
16 number that was given on the proposed settlement  
17 notification. I realize someone already covered this,  
18 but I will go on.

19 They expressed frustration about trying the number  
20 over and over, in between farm work, because the market  
21 administrator's hours, I believe, only go till five  
22 o'clock.

23 As a class representative, Jonathan called the  
24 market administrator himself. Eric F. Rasmussen, in the  
25 Boston office, was not available. Jonathan was directed

1 to Mr. Rasmussen's counterpart in the Albany office,  
2 Peter Fredericks. Mr. Fredericks explained, and I  
3 quote, "We're not party to this. We were dragged in."

4 When Jonathan asked if anyone had called to ask  
5 permission to give the market administrator's number,  
6 Mr. Fredericks said, "No. If someone would have called,  
7 I'm sure Eric would have let me know. We talk all the  
8 time." Mr. Fredericks was told that Rust Consulting was  
9 at fault. Mr. Ben Brown had told Garret Sitts and  
10 Jonathan that Cohen would not use Rust Consulting again  
11 after a number of blunders with the Dean settlement,  
12 which they handled.

13 Mr. Fredericks also commented about the boundary of  
14 Order 1. Remember, he works at the market  
15 administrator's office. He commented on the boundary of  
16 Order 1 being used in this case, which leaves out  
17 farmers who sell into Order 1 but do not reside in. And  
18 I quote, "If they," referring to plaintiff counsel,  
19 "wanted to maximize the number of claims" -- in other  
20 words, farmers relieved -- "they would never have  
21 handled it like this."

22 Your Honor, before I go on with farmers' issues  
23 dealing with the settlement itself, farmers insisted  
24 that I ask you if you know what the protocol is or if  
25 there is a protocol for farmers who have openly opposed

1       this proposed settlement, in the event that they  
2       experience retaliation from DFA, DMS, either now or in  
3       the future? They were asking me, "Do we call the Court?  
4       Are we supposed to call counsel?"

5           I said, "I have no idea if there even is any type  
6       of protections in place." So, I don't know if you know,  
7       and maybe you can get back to us.

8           THE COURT: So, you have the settlement  
9       agreement, and it has a provision in it, and as your  
10       fellow class representatives who talk about how is it  
11       enforced, where's the protection, who has the burden of  
12       proof, those are some of the questions I have for the  
13       attorneys.

14       In the absence of that, you have the rights of a  
15       citizen. If you think a crime has been committed, you  
16       call the police. If you think your civil rights have  
17       been affected, you file a lawsuit.

18       So there isn't any special protection that comes  
19       out of being in a lawsuit, but I believe the courts take  
20       a serious claim seriously.

21           CLAUDIA HAAR: Okay. Thank you. I'm sorry.  
22       I didn't mean to jump ahead.

23           THE COURT: No. That's fine.

24           CLAUDIA HAAR: I didn't know that was going to  
25       be one of your questions for counsel.

1           In trying to organize farmers' concerns about the  
2 settlement, I was grateful to find and will now use the  
3 nine-factor framework that this -- that the Second court  
4 has identified in determining whether a settlement is  
5 fair, adequate, and reasonable.

6           Number one, the complexity, expense and likely  
7 duration of the litigation. I deal with these issues  
8 one at a time, and I deal with them in the most length.  
9 So it's -- the rest -- I won't spend as much time on  
10 each of the nine, just to spare you.

11           How complex is this case? While there is a level  
12 of complexity to our case with regards to figuring out  
13 damages, which most of them have been figured out  
14 already, the body of this case is so simple that even a  
15 dairy farmer can figure it out.

16           DFA, DMS is not a cooperative at all, according to  
17 the Capper-Volstead term that it must operate, and I  
18 quote, for the members' benefit of its -- for the mutual  
19 benefit of its members.

20           Our collective experiences have proven this. DFA,  
21 DMS should not be immune under any Capper-Volstead  
22 protections, especially their consolidation of the milk  
23 markets as is alleged in this case.

24           Okay. Now I will direct your attention to  
25 Exhibit F.

1                   THE COURT: So, Jen, what happened to the  
2 system?

3                   MS. JEN: Did you want to show Exhibit F?

4                   CLAUDIA HAAR: No, no, no. It's an article.

5                   THE COURT: Okay.

6                   CLAUDIA HAAR: I figured you folks could look  
7 at that.

8                   I applaud Christine A. Varney. She is the  
9 Assistant Attorney General of the antitrust division at  
10 the United States Department of Justice who so clearly  
11 explains the intention of Capper-Volstead in her  
12 thorough article I have included as Exhibit F.

13                  I appreciated this because I was not fully  
14 understanding what the implications of Capper-Volstead  
15 was, and so it gave me quite an education. That's why I  
16 have included the entire article. Also, with regards to  
17 Ms. Varney's position, I think that it should be  
18 considered seriously.

19                  In fact, this article was so powerful in its  
20 implications with regards to our case directly that five  
21 months later Senator Charles E. Schumer from New York  
22 wrote to Ms. Varney urging her to leave the antitrust  
23 laws alone as they relate to dairy cooperatives. So  
24 obviously this must have struck a chord with someone in  
25 the cooperatives, and they contacted Senator Schumer and

1       said, "You have gotta do something." That's my opinion.

2           I have provided this article and another related to  
3       this same topic as Exhibits G and H. I won't read from  
4       them right now, but it basically explains how Senator  
5       Schumer is -- is asking Miss Varney, you know, "Please  
6       don't touch this area of law because it's very important  
7       that we keep it in place." Of course, he has his  
8       motivation. And I do know that, as a cooperative, we do  
9       donate money to various political causes.

10           And the second one, "Regulations May Hurt Dairy  
11       Co-ops," this is Exhibit H. They both have the same  
12       author. I should stop and explain that. Mark Heller  
13       wrote both of these articles. They are both from the  
14       Watertown Daily Times. Interesting, Mark Heller's  
15       mother grew up on a dairy farm down in Chenango County,  
16       which is just 10 minutes from where we live.

17           Okay. So this article, "Regulations May Hurt Dairy  
18       Co-ops," Mark Heller interviewed Edward Gallagher, vice  
19       president of economics and risk management at Dairylea  
20       Cooperative. To summarize it, what he says is that  
21       regulations may hurt dairy cooperatives. It might make  
22       it difficult for them to operate and do the business  
23       that they do on behalf of farmers.

24           Dairylea merged with DFA officially in April 2014.  
25       So while he was not representing DFA, DMS per se, they

1       are now officially merged. And I found out that  
2 information from Mark Heller because I had called him to  
3 get his permission to use his article.

4           Interesting also, two years after he had written  
5 these articles, his job at the Watertown Daily Times was  
6 ended. They closed that position. So he works  
7 someplace else now.

8           Why our counsel did not clearly represent  
9 simplicity of the body of our case to your Honor remains  
10 a mystery. At the class certification hearing,  
11 September 26th, 2011, your Honor asked these questions  
12 of Mr. Kit Pierson, and I quote: "Who is doing what to  
13 whom and why?" This was almost two years into the  
14 litigation.

15           Unfortunately, instead of answering your Honor's  
16 questions, Mr. Pierson spent quite a bit of the Court's  
17 time explaining the defendants' position. Perhaps that  
18 was because he was -- he has 24 years' experience as a  
19 defense attorney, largely in antitrust and class action  
20 suits. After that time, Mr. Pierson was hired by Cohen  
21 Milstein in 2009, when this case was filed.

22           After the class certification hearing, in September  
23 2011, we asked our counsel to please answer your Honor's  
24 basic questions. We said, "She needs to understand the  
25 fundamentals of the case." But what do we know? We're

1       only farmers. They would not.

2           In October 2011, Jonathan handwrote a note to  
3       address these issues and sent it to the Court. We  
4       didn't know that that wasn't protocol, and being  
5       farmers, you run into problems; you're on your own. So  
6       you try to solve them as clearly and directly as you  
7       can.

8           Okay. So we learned that the proper protocol was  
9       to sent the information via our counsel. No problem, we  
10      thought. We then asked counsel to file Jonathan's  
11      letter. They would not.

12           Some months later, Terry Sullivan, who is a highly  
13      regarded attorney with BakerHostetler, a woman who has a  
14      lot of experience and is highly regarded, offered to  
15      help Jonathan with the declaration to get this  
16      information to the Court. So the two of them worked on  
17      it. Mr. Haar was very -- felt very satisfied that the  
18      product said what he wanted to say, but he was able to  
19      take some help in terms of making it legible, at the  
20      least.

21           Mr. Pierson insisted on critiquing the document.  
22      Jonathan disagreed with all the neutering of his salient  
23      points by Mr. Pierson. There was no sense in continuing  
24      to argue. Mr. Pierson put his final version in double  
25      envelopes. Jonathan was instructed to sign the

1 declaration and send it to Andy Manitsky, who would then  
2 file it with the Court.

3 The UPS lady came down our long driveway. We live  
4 on a dead-end road. The kids all hollered, "She's here.  
5 She's here." When she presented the large envelope,  
6 Jonathan ripped it open, he took out Mr. Pierson's  
7 version and put his original document, signed, into the  
8 smaller envelope, and sent it on its way.

9 Cohen only found out two weeks later when Jonathan  
10 expressed his relief to Ms. Sullivan of finally having  
11 answered your Honor's questions that are foundational to  
12 our case. We have included Jonathan's original  
13 declaration, which is Exhibit I; the critiqued version,  
14 which is Exhibit J; and I'm sorry, but I failed to -- I  
15 have the third version, which was Mr. Pierson's version  
16 that he had put in the envelope that we took out.

17 We realized that this was a little extreme to go  
18 through this process, but we needed to make sure that  
19 Mr. Haar's declaration was indeed the words that he  
20 wanted to declare.

21 This experience contributed to us questioning  
22 Mr. Pierson's loyalty and violations related to Rule  
23 23(g)(4). There are so many experiences that I could  
24 share of how Mr. Pierson and Cohen and Milstein fought  
25 against us and this case, making it much more complex,

1       but I will refrain.

2           What does all of this mean, what I have presented  
3       you, articles about Capper-Volstead, issues we have  
4       with -- with our counsel? What does it all mean?

5           As we read through the papers of our case  
6       proceedings and attended hearing after hearing, we  
7       wondered, why is there so much confusion? We know our  
8       case, but what we're hearing and what we're reading is  
9       not adding up. Like your Honor asked, who is doing what  
10      to whom and why?

11           It finally came to me, after a nightmare at 5:45  
12      this morning. It's a nightmare for several reasons. I  
13      will be honest. We have worked with this counsel for  
14      quite some time, and there's no pleasure in having to  
15      share this information, but it's only because I love  
16      them. Like I tell my children, "I love you. That's  
17      why, if you are doing something wrong, I have gotta  
18      correct it. It's for your own good."

19           Your Honor, there are actually two nightmares of  
20      injustice going on here simultaneously. The first is  
21      that DFA, DMS has taken a perfectly sound structure,  
22      that being of the dairy cooperative, which literally was  
23      meant for dairy farmers working cooperatively to market  
24      their milk. DFA, DMS has corrupted this system by  
25      misusing Capper-Volstead in a two-fisted approach: In

1       the one fist, oppressing the producers through  
2       monopsony, while at the same time, in the other fist,  
3       oppressing the processors through monopoly.

4           I'm sorry. I said that wrong.

5           The first fist is oppressing the producers through  
6       monopsony, while at the same time oppressing the  
7       processors through a monopoly. This is a brilliant  
8       plan, but so was Hitler's. Evil is evil.

9           Now, the second nightmare of injustice. Our  
10       counsel has taken a perfectly sound structure of  
11       antitrust class litigation, whereby citizens of this  
12       great nation are able to find justice against illegal  
13       oppressive behaviors of giants, which we otherwise, on  
14       our own, would not be able to do, or so we thought.

15           How does this work, you may ask? Your Honor, it's  
16       simply a game of cat and mouse. Counsel gets  
17       information from class representatives, and we are all  
18       too happy to share this information because we're  
19       thinking, This is going to lead to justice, and we are  
20       going to have change, and there's going to be a brighter  
21       day for dairy farming, the economy of -- the world  
22       economy, our children.

23           But they get just enough information to hold  
24       defendants' neck up against the wall, and then they say,  
25       If you just give us the money, nobody will get hurt.

1           Our counsel has corrupted this system by  
2 specifically addressing off-target issues designed  
3 specifically not to affect any of the business practices  
4 of the defendants, thereby not providing any relief  
5 whatsoever for the dairy farmers or even for the  
6 processors.

7           They have addressed these off-target issues  
8 voluminously, as you know. I have heard you say, and I  
9 believe it, that you read every word that comes across  
10 your desk. So I'm going to refer to Exhibit K just for  
11 a moment. Page two of this -- this is an article from  
12 Laws360, which is a law publication, and it deals  
13 specifically with our case.

14           I would like the Court at a later time to be able  
15 to read all of it. They speak about your ability to  
16 split the baby, which refers directly to King Solomon's  
17 wisdom in trying to figure out justice. It's quite an  
18 honor.

19           So this article is titled, "Milk Processors Soured  
20 After Rare Monopsony Ruling." I am not going to deal  
21 with the article right now -- I will in a few moments --  
22 but I am going to direct your attention to page two,  
23 right underneath the boldface title saying "Plaintiffs'  
24 Sundry Antitrust Claims, Conspiracy, Monopsonization,  
25 Attempted Monopsonization and Price Fixing Claims."

1           For the plaintiffs' remaining claims, the court  
2 effectively split the baby. And after exasperated  
3 admonishment of both sides' extensive lists of  
4 undisputed facts -- and then they list how many was in  
5 each one -- the court ultimately -- and then it goes on,  
6 and I will deal with that in a minute, that you were --  
7 you were basically buried in all of this information  
8 that was undisputed facts but were still able to bring  
9 some semblance of understanding out of it.

10           Most recent time is the first page in the last  
11 filing that the defendants and the plaintiff counsel had  
12 given you, I believe it was supposed to be in seven days  
13 before this hearing. And the first page in this packet  
14 is the request to exceed the page limit. I know you  
15 have said, and as a teacher I completely concur, that  
16 you should be -- if you are intelligent, which these  
17 gentlemen are, and ladies, you should be able to state  
18 your points succinctly as possible. So why the  
19 exceeding of the page limit? Why this big workload?  
20 We'll get to that.

21           Joshua has done research and found that Cohen  
22 employs this strategy often, the first page saying,  
23 Could we please exceed -- of course you don't have a  
24 chance to respond because then you have the whole  
25 voluminous filing before you. Did they think that they

1       would fool you, your Honor? Or perhaps they would weary  
2       you to just sign off on this settlement and make them go  
3       away. I won't ask you, but I'm sure that the thought  
4       might have crossed your mind.

5           What they didn't account for in all of their  
6       schemings was providence. It is my belief that God  
7       Almighty has put you in this position for such a time as  
8       this. That is why you, your Honor, who were looking for  
9       truth, and we, who were looking for justice, were  
10      thoroughly frustrated, until now.

11       This fairness hearing will prove fair in only one  
12      way: It is that we have had this opportunity, as  
13      farmers, to deliver the truth directly to you about what  
14      has been going on here.

15       Your Honor, that you may serve justice that we are  
16      seeking, that is why we are delivering this truth to  
17      you.

18       And I will make a side note that -- I think it only  
19      came to me that -- early this morning, not that I slept  
20      very well this whole week, because I realized that the  
21      words that I am saying are very weighty and they have  
22      strong implications, and this is not really a place that  
23      I wanted to go to. When I signed up to be a class  
24      representative, I was looking relief for fellow farmers  
25      and our farm and looking at the future of dairy farming.

1       I had no idea that we were going to be able -- we were  
2       going to be realizing that there is this corruption  
3       going on, not just with the defendants, but also with  
4       our own counsel.

5           So that is why I use the term about it's a  
6       cat-and-mouse game, you know. We will beat you up a  
7       little bit, but really not too hard. Hand us the money,  
8       and we will go away for a while. It's also job security  
9       because, being that they're not going to change anything  
10      that they do if we agree to the settlement, then in 10  
11      years we can be right back in here again and be able to  
12      keep busy.

13           I would like the Court to know that we did search  
14      for additional or potentially new counsel. It's not  
15      like we haven't tried. We have called antitrust firms  
16      all across the country. We heard many excuses. The  
17      last firm was kind enough to be honest and explain that  
18      the world of antitrust lawyers is rather small, and it  
19      was doubtful if we would get anyone to step on the toes  
20      of our current counsel.

21           My son Elijah, who is here today, recognized this  
22      immediately as an unwritten nonsolicitation agreement.  
23      Thank you all for the education.

24           One of Mr. Abrams' former colleagues offered to  
25      help us add new counsel. This proposed new counsel

1       informed us that if we added or procured new counsel  
2 completely, we would run the risk of losing our position  
3 as class representatives. We left off our search for  
4 now, recognizing that we may need a court order for new  
5 appointment, as in the recent Pella case, from the  
6 Second -- Seventh Circuit, which was decided June 2nd,  
7 2014, where they dealt with appointing new counsel.

8           I will now address the expense of protracted  
9 litigation. If I may assume that Mr. Kuney and his  
10 associates make the similar 600 to \$800 an hour as our  
11 attorneys, then they would be due -- that would be these  
12 folks -- they would be due about \$5 million a year for  
13 their services.

14          We need to look at this number in relation to the  
15 expense of the class for doing business as usual, which  
16 would be the effect of taking this proposed settlement.  
17 Having spoken to farmers in the Southeast, we know that  
18 things have not only returned to business as usual, but  
19 as we heard before, that they have become even worse.  
20 If it is farmer owned and farmer driven, then why must  
21 you give written permission to show up at a meeting and  
22 only be allowed to say your piece and then you must  
23 leave?

24           Dr. Rausser's damages models have ranged from a  
25 billion dollars to the current figure of \$350 million,

1       which we are -- were approved to go to trial with.  
2       Taking -- excuse me. Taking the lesser amount of  
3       \$350 million in damages, to be conservative, divided by  
4       the 12-year period -- this would be from 2002 to 2014 --  
5       the expense of the class doing business as usual with  
6       DFA, DMS is costing us farmers roughly \$29 million a  
7       year. So I don't mind paying Mr. Kuney 5 million. I  
8       mean, hey.

9             This is nearly six times the annual cost of  
10      continuing this litigation. So, if we project that this  
11      case were to take, let's say, another four years, making  
12      it 10 years all together -- I like 10 because it's a  
13      good round number -- we farmers would have paid out  
14      \$50 million to defendant counsel. If we don't sell  
15      ourselves out or persevere for something fair,  
16      reasonable, and adequate, we would be unencumbered from  
17      this \$29 million-per-year expense for milk market  
18      suppression that we are already paying.

19             So in less than two years, that \$29 million would  
20      pay back Mr. Kuney and the firm of this litigation, and  
21      we could start using that \$29 million a year, which  
22      would be kept by farmers, to reinvest into our farms,  
23      feed distributors, seed companies, farm equipment  
24      dealerships, agricultural supply stores, hardware  
25      stores, mechanic shops, diners and other businesses,

1       thereby revitalizing our rural, local economies across  
2       the Northeast.

3           Your Honor, if this case takes 20 years, then it  
4       would take us four years to pay it back. Dairy farmers  
5       that I have spoken to said that they would pay this cost  
6       for freedom from our oppressors.

7           We are not a class of people that are looking for a  
8       handout because we know how to create wealth from the  
9       land. We enjoy that hard work. So the idea of getting  
10      \$4,000, some money back, means nothing. If we cannot  
11      change the structure of how this corrupt model has  
12      hijacked what dairy cooperatives were meant to be, then  
13      we have no relief whatsoever. If anything, it just  
14      gives them more strength to just tighten the fist.

15           With regard to the duration of litigation,  
16       considering our CEO was previously an attorney from  
17       Brooklyn -- that's Rick Smith -- and his administration  
18       has painstakingly attempted to conceal their illegal  
19       behaviors, it's -- what I am trying to say is that  
20       Mr. Smith is a smart man, and they have gone through  
21       extensive measures in order to conceal their illegal  
22       behavior.

23           Also, our senior vice president, Greg Wickham, is  
24       brother-in-law to Lawrence Schwartz. Who is Lawrence  
25       Schwartz? He holds the position of secretary to present

1       governor of New York Andrew Cuomo. Like we have  
2       recently seen with the current Sheldon Silver case,  
3       misconduct at these levels takes time to unravel. It is  
4       interesting to note that Mr. Silver, who is a native to  
5       lower Manhattan, took position as Speaker of the House  
6       in 1994.

7           What on earth does that have to do with what we are  
8       here for today? I will tell you. This is the same  
9       requested time for the releases of the settlement to  
10      begin. Your Honor mentions this odd request that  
11      extends roughly eight years prior to this case in your  
12      denial of preliminary approval. Suffice to say, this  
13      case will take more time to litigate, but the outcomes  
14      may have further-reaching and longer-lasting  
15      implications than any of us had originally anticipated.

16           I will now address the next factor in the  
17      framework. I called it your framework because I  
18      misunderstood. I thought this was only Second Circuit.  
19      My son Joshua educated me, so -- he says, "Ma, you can't  
20      say that." I am just mentioning that because when you  
21      get the copy of it, you would be like, Whoa, what  
22      happened? That's what happened. The mother was  
23      ignorant. Okay. But at least I know how to learn from  
24      my mistakes.

25           The reaction of the class to settlement. This is

1       the second factor in our framework. What is the  
2       reaction of the class?

3           I noticed a common theme among most of my fellow  
4       farmers who are in favor of this proposed settlement.  
5       They were honest enough to admit a lack of knowledge  
6       about this case in general or the proposed settlement in  
7       particular. I would hope that after today's hearing,  
8       they would set aside time to research for themselves the  
9       claims that we are making. Since DFA, DMS have chosen  
10      not to open the record of the case and to keep the  
11      majority of the evidence confidential, I realize that  
12      their research will be hampered.

13           I would also like to say that we respect these  
14       farmers as fellow colleagues and recognize their effort  
15       on their farms.

16           It has come to my attention, as a class  
17       representative, that there are two other pending  
18       litigations against DFA, DMS at this time. Farmers  
19       involved see the -- this broad release and the proposed  
20       settlement as unfair and completely unreasonable with  
21       regard to being able to pursue any further relief for  
22       illegal behavior that has recently been discovered, not  
23       to mention the future recovery for illegal behaviors yet  
24       to be found out. Farmers are wondering about the  
25       legality of the broad release as well. They're saying

1 to me, Can they even do that legally?

2 The letters you received in opposition sums up the  
3 majority of what farmers think about this proposed  
4 settlement. I notice a common element in that many do  
5 not want any settlement monetarily, not even injunctive  
6 relief. These people want this case to go to trial so  
7 that evidence, which currently only rests with class  
8 representatives, would be made public. Farmers want  
9 justice. If we plant corn, then we reap corn. If DFA,  
10 DMS has sown corruptions, farmers want them to reap  
11 judgment.

12 Some farmers have said that without any remedy for  
13 DFA, DMS cooperative status, the milk market  
14 suppression, DFA, DMS testing, and in-house elections,  
15 the monetary relief is inconsequential. Some farmers  
16 have said that the lawyers could have all the money if  
17 they would accomplish the above items of injunctive  
18 relief, which would be meaningful and reasonable.

19 We are farmers -- I already said that. Sorry. I  
20 jumped ahead of myself.

21 It seems to me that whether you are Donald Trump or  
22 a homeless beggar on the street, nobody likes to be  
23 stolen from. To accept this unfair, unreasonable, and  
24 inadequate relief would be like getting a dead calf back  
25 from a crooked cattle dealer who has just stolen your

1 whole herd.

2 Some farmers are weary of this fight. They want it  
3 to be over and just go away. This all sounds very nice  
4 and appealing, but agreeing to this proposed settlement  
5 actually ensures that it won't be over, and it will  
6 never go away.

7 How can we give up? I think of my father, Pasquale  
8 Catalano, who is a 92-year-old World War II veteran and  
9 a Purple Heart recipient. He was a sergeant in B  
10 Battery, 359th Field Artillery Battalion, 95th Infantry  
11 Division. These men earned the title of the Iron Men of  
12 Metz for their notable accomplishment of liberating the  
13 French city of Metz. Each person in that generation did  
14 their part. Collectively, they triumphed, bringing  
15 deliverance to those in concentration camps and an end  
16 to the war.

17 I am grateful and proud of that generation, but I,  
18 too, realize that the price of freedom is eternal  
19 vigilance. As Benjamin Franklin put it: How can I  
20 expect our six children to value freedom, stand up for  
21 truth, and fight for liberty, if I am not willing to  
22 sacrifice in the face of such a great injustice? This  
23 is how I, as a farmer, feel about this case in general  
24 and this sellout of a proposed settlement in particular.

25 Counsel has attempted to devalue farmers'

1 opposition in this settlement. They say that they know  
2 what is in the best interests of the class. I will just  
3 address one letter that they commented on, which was  
4 Mr. Eby's letter of -- in opposition to the settlement.  
5 Counsel's argument against Mr. Eby's claim is that he  
6 used the Southeast litigation case in comparison to this  
7 Northeast litigation case, which I find is quite ironic  
8 being that these attorneys completely rely on their own  
9 ability to take similar cases and match them up to their  
10 arguments -- or perhaps their paralegal's ability, to  
11 match their own -- these similar cases to their  
12 arguments in order to litigate them. This is exactly  
13 what Mr. Eby did, and he doesn't have a law license.

14 So in the words of my son Benjamin, who is not here  
15 today -- he is taking 19 credits in animal science to be  
16 a veterinarian, so he is looking to stay in the  
17 agricultural community -- the relation -- this is what  
18 Benjamin said: The relation between a lawyer and  
19 farmers is like that of a potato in a corn crib.

20 Your Honor, counsel's criticisms of farmers in  
21 opposition are rendered irrelevant with their choice of  
22 maintaining ignorance as to our concerns, risks, and  
23 livelihood as farmers. I received permission from  
24 Anthony Bilinski to use the last portion of his letter  
25 to sum up what the majority of the class thinks about

1       this settlement. This is a gentleman who lives nearby,  
2       and -- and he opposed the settlement.

3           And I quote -- you have a copy of it. I quote,  
4       "Yes, I know I will likely pay dearly for this letter if  
5       you choose to ignore it, but there is a saying which I  
6       believe applies here. All it takes for evil to triumph  
7       is for good men to do nothing."

8           Okay. So now we get to move on to the third factor  
9       in the framework in trying to determine whether or not  
10       the settlement is fair, reasonable, and adequate: the  
11       stage of the proceedings and the amount of discovery  
12       completed.

13           Despite the fact that this Court instructed  
14       both defendants and subclass counsel at the August 1st,  
15       2013, hearing that if they were going to settle, now is  
16       the time. I remember you specifically saying that. You  
17       explained about the -- you explained the effort and  
18       resources involved in preparing for a jury and trial.

19           As the Court is aware, we were just 18 days from  
20       trial when defendants and subclass agreed on a monetary  
21       settlement and notified the Court, before any of us  
22       class representatives, that only some injunctive relief  
23       need be ironed out. We are as far along as we can be to  
24       trial, save the motions *in limine*, hearing and trial.  
25       So we have an established case. We have our damages

1 ready to go.

2 Number four: the risks of establishing liability.  
3 We were told by Mr. Ben Brown that he couldn't wait to  
4 take this case to trial. An attorney at Baker had told  
5 us that they were sure we would win at trial. Their  
6 only concern was that they -- was what they would  
7 receive in damages. Because you remember, with the Dean  
8 settlement, they did not receive all that they requested  
9 from this Court.

10 I have provided a copy of the article, Exhibit K  
11 from Law360, whose title says it all: "Milk Processors  
12 Soured After Rare Monopsony Ruling." This article was  
13 written about our case specifically and after your  
14 summary judgment ruling. To quote the article, "The  
15 Court" -- this is where I left off before, saying that  
16 after you had all this piles of undisputed facts to work  
17 through, you ultimately found that genuine issues of  
18 material fact persisted, and the conspiracy,  
19 monopsonization, and attempted -- monopsonization claims  
20 must be decided by a jury.

21 In this case, the macroeconomic impact doesn't  
22 favor the monopsony with regard to the consumer because  
23 they receive no benefit. In other words, for all of the  
24 suppress- -- oppressive behaviors of DFA, DMS, whether  
25 they pay us more as farmers or less as farmers, when you

1 go to the store, the price remains the same. So it's  
2 not like, Well, we paid the farmers less, and then when  
3 you go to the store it's a little bit cheaper, so  
4 consumers are getting some benefit. They are  
5 essentially using their power on both ends of the  
6 spectrum, as a middleman has the power to do.

7 Number five: the risks of establishing damages.  
8 Our case made it through summary judgment with  
9 \$350 million in damages to proceed to trial with.  
10 That's all that I have about that. That was pretty  
11 quick. So pretty much we are in good shape.

12 The risks of maintaining the class through the  
13 trial. Your Honor, I noticed in the defendants -- in  
14 the defendants -- of the proposed settlement, filing of  
15 memorandum of law in support of the dairy farmers'  
16 subclass motion for final approval of the postsettlement  
17 with defendants, that -- the last filing that they made  
18 seven days ago, that although they have a heading which  
19 includes maintaining a class action through trial, there  
20 are no arguments listed in that section.

21 Your Honor went through a rigorous analysis before  
22 certifying subclasses. We have no reason to doubt that,  
23 having been established, they would not be maintained  
24 through trial.

25 The ability of the defendants to withstand a

1 greater judgment. Do the defendants have the ability to  
2 withstand greater judgment? Yes. We have attempted to  
3 clearly explain how the defendants have unlimited access  
4 to our capital.

5 Eight: the range of reasonableness of the  
6 settlement fund in light of the best possible recovery.  
7 Our best possible recovery is that we win at trial with  
8 our damage model of \$350 million being trebled, to equal  
9 1 billion, 50 million dollar recovery. In light of  
10 this, the settlement fund is completely unreasonable.

11 The range of reasonableness of the settlement fund  
12 to a possible recovery in light of all the attendant  
13 risks of litigation. Mathematically, \$50 million  
14 represents about 4.4 or 4.8 percent recovery. In order  
15 for this to be reasonable, we would have to have a  
16 greater than 95 percent chance of losing at trial.  
17 Prior to the blurring influence of settlement, our own  
18 counsel would never have assigned this case to that  
19 level of risk. The lack of injunctive relief, coupled  
20 with the release, renders this proposed settlement worse  
21 than if we had went to trial and lost.

22 In conclusion, your Honor, we farmers want to thank  
23 you for seeking out truth to bring about genuine  
24 justice. You have not been willing to just play the  
25 good old boys' game. Thank you for your patience.

1           And in summary, your Honor, here is our position:  
2       We have the mountains of Sinai on our right. On our  
3       left, Pharaoh and his armies who, for a moment, heard  
4       our cry of "Let my people go." But at the last, have  
5       turned to pursue us, only to drag us back to Egypt and  
6       the bondage we endured.

7           We beseech you, your Honor, as our guardian, with  
8       the power to eviscerate the oppressors, to rend the  
9       settlement asunder before us with prejudice, that we  
10       might fight on into the promised land, a land flowing  
11       with milk and honey. Thank you.

12           THE COURT: Thank you.

13           Does anybody else want to speak?

14           KENNETH DIBBELL: Your Honor, I would like  
15       to vehemently oppose this settlement.

16           THE COURT: So, first things first, your name.

17           KENNETH DIBBELL: Kenneth Dibbell.

18           THE COURT: Kenneth Dibbell.

19           KENNETH DIBBELL: You have it.

20           THE COURT: And I do have it, and it's spelled  
21       D-i-b-b-e-l, right?

22           KENNETH DIBBELL: Two Ls.

23           THE COURT: Two Ls.

24           KENNETH DIBBELL: Going back, I would like to  
25       vehemently oppose the settlement as proposed as being

1       totally unfair to the producers in Federal Order 1  
2       versus those in the Southeast case. There is no  
3       comparison.

4           I'd like to do a little history on farm numbers. I  
5       was born just 17 miles from here -- correction, 26 miles  
6       from here. Grew up a lot in Stowe. All during World  
7       War I, boy -- World War II, 1940, we had 4.66 million  
8       expected dairy producers in this country. Today, we  
9       have 1 percent of that number, 46,000, is all the  
10      producers we have left in this country. And a very  
11      large portion of the milk is being made by a small -- 20  
12      percent of the farms, the large farms.

13           It's been a total injustice how the dairy community  
14      family farms have been treated by the federal  
15      government, by their cooperatives, period. When it  
16      comes to cooperatives, on the milk-testing issue, my  
17      cooperative shipped milk to Kraft Foods for 10 years  
18      under two contracts, through -- we had an independent  
19      lab do the butterfat, bacteria, et cetera.

20           Well, DFA, DMS convinced Kraft to buy their milk  
21      from them instead of from the South New Berlin Co-op.  
22      We had a choice. We had no market for our milk other  
23      than DMS, or we could have hauled it all the way to  
24      Winchester, Virginia, and our trucker wasn't real  
25      impressed with that. So we signed up with DMS. In the

1       first two months, everybody's butterfat went down two or  
2       more points, their bacteria went up, and their somatic  
3       cells went up. The same milk had been testing good for  
4       10 years. That's just an illustration of the  
5       hanky-panky that goes on with DFA, DMS.

6           The federal government is equally responsible for  
7       this fiasco that has put 99 percent of the dairy  
8       producers out of their business. They have stolen  
9       their -- their heritage and ruined their livelihood.  
10       You have heard it -- farm families say here their kids  
11       are not interested. Well, it is hard work. There's a  
12       lot of reward monetarily, but those kids who grew up on  
13       the farm and learned to work are still out there working  
14       somewhere. Those who grew up in town and didn't learn  
15       to work are now living off the system. Second and third  
16       generation. Outrageous.

17           Federal government has created several so-called  
18       safety nets to protect dairy farmers, none of which  
19       worked. Price support system works better than most,  
20       but it cost the taxpayers quite a lot of money because  
21       they had to buy their surplus product and give it away.  
22       Well, now we have got 46 million people on food stamps.  
23       That's not a small bill.

24           I don't have that one with me.

25           THE COURT: I did read your whole letter.

1                   KENNETH DIBBELL: I beg your pardon?

2                   THE COURT: I did read your whole letter and  
3 the attachments.

4                   KENNETH DIBBELL: The part that I left back  
5 there, you have it in your packet. I'd appreciate it if  
6 you study it. I have got one in my hand, just one more.

7                   THE COURT: Sure.

8                   KENNETH DIBBELL: USDA Economic Research  
9 Service calculates the cost of production on a U.S.  
10 dairy farm, 50 cows or less, as \$50.84 per  
11 hundredweight. Go to a hundred cows, it's \$40 and  
12 change. It doesn't get down to \$27 until it hits a  
13 thousand cows. This should be fixed, but we have been  
14 trying for a long time to get a price hearing in  
15 Washington. Well, it hasn't happened.

16                  And it's -- our Senator from New York, Kirsten  
17 Gillibrand, had it in her farm bill proposal that, upon  
18 request, the secretary would have to hold a price  
19 hearing, if we could ever get a hearing, we could get  
20 this thing on a fair pricing basis, at least.

21                  Senate Bill 1645 from 2007, the Casey-Specter bill,  
22 would have prevented this current disaster and a loss of  
23 a lot of farms in between because it had supply  
24 management function. If it continued to grow  
25 oversupply, those who were causing it were going to get

1       less for their milk, and they were going to maintain the  
2       pay price for the lesser producers. Their heritage.  
3       But didn't happen.

4               One more, and I can't remember it. Thank you for  
5       listening.

6               THE COURT: All right.

7               KENNETH DIBBELL: And study your paperwork.

8               THE COURT: I will.

9               KENNETH DIBBELL: Thank you.

10              THE COURT: We are going to take our  
11       midafternoon break at this time, five to 10 minutes. We  
12       will come back and resume our hearing.

13              Anything to bring to my attention before we break?

14              MR. PIERSON: No, your Honor.

15              (Court was in recess at 2:28 p.m.)

16              (The following was held in open court at 2:40 p.m.)

17              THE COURT: We are back on the record in Alice  
18       Allen, et al., versus Dairy Farmers of America.

19              And do we have somebody else who wants to speak?

20              LARRY BAILEY: Yes, your Honor.

21              THE COURT: Yes?

22              LARRY BAILEY: Your Honor, my name's Larry  
23       Bailey, B-a-i-l-e-y. And I am going to come at this in  
24       a little different light of where -- in favor of the  
25       settlement agreement.

1           First, I'd like to give you a little intro that we  
2 are a family farm. I farm with my wife, my in-laws, and  
3 my brother-in-law. We milk 1100 cows in Fort Ann, New  
4 York, which is in Washington County, New York. And as  
5 you well are aware, it borders Vermont and several other  
6 large counties -- or counties in New York State, eastern  
7 New York State.

8           And within our county there are several different  
9 sizes of farm, from the Amish community now in  
10 Whitehall, New York, of 10 cows, to farms that are quite  
11 a bit larger than we are. And as you know from our  
12 letter, that we are a member of DFA for now. We are in  
13 our 15th year as a DFA member and very happy with that.  
14 Currently, we are currently shipping between 2.3 and 2.4  
15 million pounds of milk a month, and it is mainly going  
16 to HP Hood in Agawam, Mass.

17           Previously to DFA, we were with an independent, and  
18 we chose to go with DFA for the competitive price  
19 advantage. And we wanted to share that there are  
20 choices today, and we do have choices today, and on a  
21 regular basis, I do look for other options to market my  
22 milk. And so far, in 15 years, even though I do talk to  
23 one company probably six times a year -- I am good  
24 friends with one of the guys who runs it -- DFA has  
25 always been able to give us a competitive price for the

1       hard work that we do on a daily basis.

2           And in addition, I'd also like to tell you that  
3       we -- in addition to the farm, we also run a grain and  
4       trucking company. We -- we sell processed grain to  
5       farmers, and we deliver for Cargill Animal Nutrition out  
6       of Salem, New York. And currently we have nine units on  
7       the road and seven drivers, and we deliver those feeds  
8       into New York, Vermont, Massachusetts, New Hampshire.  
9       And it's been a very successful company, and we enjoy  
10      what we do, and we get to visit with a lot of fellow  
11      dairy farmers and become their friends.

12           Furthermore, we also own and operate two farm store  
13      locations, one in Fort Ann, New York, and one here in  
14      St. Albans, Vermont. And, you know, in these stores, we  
15      see different people, we meet people, and we sell things  
16      from clothes to boots, fencing, garden supplies. And  
17      actually, I just got back from my convention in Denver  
18      where we bought perfume and cologne, so that was a  
19      little bit different and a little bit out of the  
20      ordinary.

21           And we are a member of the class, and we'd like to  
22      see this lawsuit come to an end, and we are in favor of  
23      the settlement. In business, as you are well aware, and  
24      we have been in business for a lot of years, there  
25      sometimes needs to be compromises made. These

1       compromises sometimes move to further benefit everybody  
2       involved. And businesses need to do this sometimes to  
3       move forward, get on to running and managing their  
4       businesses.

5           Just like dairy farmers, we need to come together  
6       with our fellow dairy farmers, move on, and go forward.  
7       And visiting with fellow dairy farmers in my community  
8       and customers and friends, you know, we are all feeling  
9       that this needs to come to an end, move on, move  
10      forward, turn over a new leaf, and continue forward.  
11      And that also helps the relationship that we can have  
12      with all our other dairy farmers and all our other  
13      farmer families.

14           I'd like to show you that from our farm, and other  
15      agribusinesses that we run, and fellow friends, dairy  
16      farmers, and other things, our feelings are reflective,  
17      as a member of this class, to go forward as a settlement  
18      with this lawsuit. Compromise made here would be a good  
19      thing. We need to allow our friends, our families,  
20      other dairy farmers to move forward and get back to do  
21      what they do best, running their business, to provide  
22      the public with a great nutritional product called milk.

23           Thank you for your time.

24           THE COURT: Thank you.

25           Anybody else who would like to speak?

1                   PAUL BOURBEAU: Good afternoon. I'm Paul  
2 Bourbeau, and I really appreciate the opportunity to be  
3 able to speak -- that's spelled B-o-u-r-b-e-a-u -- from  
4 St. Albans, Vermont, in Franklin County, not too far  
5 away from the Canadian border.

6                   I have a fairly unique experience to share with  
7 you. I am going to give you a little bit of bio and  
8 just to let you know that we have continued to go back  
9 to the DMS system and have made the conscious decision  
10 to stay with DMS.

11                  I'm born and raised on a dairy farm. My father was  
12 a director of St. Albans Co-op. When we purchased our  
13 own farm in 1982, at the ripe old age of 23, looked  
14 around and felt very comfortable with what St. Albans  
15 Co-op was offering to many of our neighbors. And the  
16 most competitive, successful farms in our area were  
17 members of a co-op system. Even though there were  
18 independents there and other places for us to ship our  
19 milk, we decided to go with St. Albans Co-op.

20                  We stayed with St. Albans Co-op, but then in  
21 February of 2000, we had a barn fire. We lost all of  
22 our milking facilities, lost about half the cows. Make  
23 a long story short, within a couple of hours, the  
24 decision had been made for us we were out of the dairy  
25 business.

1           We spent all of the year 2000 doing some soul  
2 searching, wondering if that was really the business we  
3 wanted to be in. And the fact of the matter is I guess  
4 it's something that gets into your blood, and we decided  
5 we were going to build back.

6           We were offered that opportunity again, in the year  
7 2001, when we built back, where are we going to ship our  
8 milk. By that time, we had the DMS system up in place.  
9 We looked at what cooperation and working together was  
10 allowing producers to do by being part of a larger  
11 organization, and we made the decision to go back to  
12 St. Albans Co-op and be part of that DMS system.

13           Fast-forward to 2008, the end of 2008, we were  
14 looking at a downturn in the economy. We were looking  
15 at a rapid increase in the milk production, and there  
16 were a lot of things that were pointing to a low milk  
17 price in 2009. As it turns out, milk prices crashed  
18 terribly in 2009, much worse than I would have ever  
19 imagined.

20           My wife and I made the difficult decision -- now,  
21 keep in mind, I have been a farmer since I was able to  
22 put my boots on by myself. That's what I'd always,  
23 always done, that's what I wanted to do, and that's what  
24 we continued doing.

25           But still, at the end of 2008, we made the

1           difficult decision to put in a bid, which ended up being  
2           accepted, to participate in the buyout program with CWT.  
3           For one year, we didn't milk any cows. We sent a letter  
4           to our vendors, to our friends, saying that this was  
5           strictly a business decision, and it was breaking our  
6           hearts, but we truly believed the only way to be in  
7           business long term -- as crazy as it sounds, to stay in  
8           the dairy business long term -- was to have no cows  
9           short term.

10           A lot of farmers went out of business in 2009.  
11           It's been estimated that farmers lost an average of a  
12           thousand dollars per cow in 2009. I think we made the  
13           right decision being out of business in 2009. Obviously  
14           it wasn't a profitable year, but we -- it allowed us to  
15           get back in.

16           So here we were at the end of 2009. We had  
17           co-ops -- I had a co-op that was not part of the DMS  
18           system wanted our milk really bad. I am going to be  
19           very honest with you, the last name Bourbeau, being  
20           three miles away from the St. Albans Co-op plant, there  
21           was -- and also we're only a few minutes away from the  
22           Canadian border -- opportunities to sell our milk to  
23           independents, and maybe our milk would have been  
24           exported; we still made the decision to go back to DMS  
25           system. We shipped our milk to St. Albans Co-op.

1           A few years ago, we -- just three years ago, we  
2 made the decision to switch to Dairylea. We looked at  
3 what was happening at St. Albans Co-op, looked at  
4 different expenditures that were going to have to be  
5 made for St. Albans Co-op to stay in business, et  
6 cetera. So without going into a whole lot of details,  
7 we decided to switch to Dairylea. Common theme there,  
8 though: We wanted to keep our milk in the DMS system.

9           Dairylea, as has been mentioned before, and you  
10 have heard many times -- and I sincerely mean this. I  
11 am very, very impressed. For five years all the  
12 information has probably been duplicated, triplicated,  
13 and so many times sent back to you, but still you're  
14 listening, and I really appreciate it.

15           At the end of -- when Dairylea was no longer  
16 Dairylea and became part of DFA, we had a choice again,  
17 Bonnie and I. Are we going to go with DFA? We have a  
18 choice here. We can go to another co-op. And we  
19 decided to stay with DFA, again, to be part of that DMS  
20 system.

21           Going back to my younger days, I was there when  
22 St. Albans Co-op formed the Young Cooperators Program,  
23 program for young farmers and members of farm families  
24 to become part of an organization that's part of the  
25 co-op in order to learn about our industry and see

1       what's happening. My wife and I were part of that  
2       St. Albans Co-op Young Cooperators Program. We ended up  
3       being national chair couple of the YCs. Of all the  
4       thousands of members in the YCs, we became national  
5       chair couple.

6           I only explain that to you because in our travels,  
7       in meeting with the other representatives of different  
8       regions of the YCs, we came back home with a much  
9       greater appreciation of what we had been taking for  
10      granted, how much competition there was for our milk and  
11      the choices that we had to market our milk. Not  
12      other -- not all other areas of the country had that  
13      ability. So we came back home with a much greater  
14      appreciation of something that we might have taken for  
15      granted for a long time.

16           In 2009, when the price of milk collapsed and there  
17      was a lot of angst in the industry, I had been  
18      involved -- as I said, starting with the YCs, I had been  
19      involved for many, many years -- with the support of my  
20      wife and my family, really paid attention to dairy  
21      policy. Senator Leahy, Congressman Welch nominated me  
22      to serve on the newly formed dairy industry advisory  
23      committee that Secretary Vilsack put together, an  
24      emergency committee, two-year term, to look at new dairy  
25      policy and what could we set up.

1           There were a few dairy farmers on that board.  
2           There were industry representatives. There were people  
3           from academia; like I said, processors and purchasers;  
4           consumer groups. So -- and government officials. This  
5           was a very wide-ranging group of individuals with  
6           different interests and different concerns when it  
7           pertained to dairy. I had always looked at it just from  
8           a dairy farmer. All of a sudden I was looking at it  
9           from a completely different viewpoint.

10           Again, when we were looking at different ways to  
11           come up with different programs to help dairy farmers,  
12           one of the things that really stood out, one of the  
13           programs -- and the government agencies came in and they  
14           said to us, we're trying to figure out exactly what is  
15           the market price for milk, what is the actual price for  
16           milk in the United States. And there were three dots  
17           around the country, three areas where you could go and  
18           there was enough competition for producers' milk that  
19           you could actually understand what the true price was,  
20           the true clearing price. And one of those dots was  
21           almost right over our farm up here in the Northeast.

22           So, again, I came back from that two years,  
23           traveling to Washington, D.C., close to every three  
24           weeks, with an even deeper appreciation. Again, here is  
25           a government agency, the national government, is saying

1       my area of the country, where I am in Franklin County,  
2       Vermont, that's one of the areas they believe is the  
3       truest competition and a lot of competition for my milk  
4       where I have enough different choices.

5           So given all of that backdrop --

6           THE COURT: How much of that --

7           PAUL BOURBEAU: Go ahead.

8           THE COURT: How much of that do you think is  
9       because of the brand of Vermont milk, and the people,  
10      for example, Ben & Jerry's, and we have a lot of cheese  
11      producers who want to say, I'm getting my milk from  
12      Vermont?

13           PAUL BOURBEAU: Very, very honest -- excellent  
14      question. Excellent question. But for individual  
15      brands, like the Ben & Jerry's, that does make a  
16      difference where the milk is coming from. What they  
17      were looking at, at that level, the USDA, of how many  
18      people were looking to buy our milk, and very little of  
19      it had to do with just the fact that it was from  
20      Vermont. We had the whole federal order. And the  
21      federal order had a lot more to do than just Vermont.  
22      But excellent question.

23           But -- so I just give you that background just to  
24      show you how many different organizations that was  
25      involved in, and we still kept coming back -- even with

1       all that knowledge, kept coming back to the DMS system.

2           Why am I in favor of this agreement being accepted  
3       and this lawsuit being settled? I am going to be  
4       perfectly honest with you. The first thing that comes  
5       to me is the stubborn Frenchman in me wants to fight  
6       this right to the very end and prove we don't owe a  
7       penny. We didn't do anything wrong.

8           I have been a school board member for 30 years,  
9       been lead negotiator for almost 25 years serving four  
10      different school districts and a high school, lead  
11      negotiator with -- for four schools right now, with  
12      currently two associations support -- union -- support  
13      staff union and a professional staff.

14           Over and over and over, the only way you come to  
15       agreement is by compromise. And there are times when we  
16       have had to do things that we didn't really feel  
17       comfortable with, but we knew that the best way to move  
18       forward and what was the best for the children was to  
19       accept an agreement that we didn't really feel  
20       comfortable with.

21           I can't say that I truly feel comfortable with the  
22       50 million. I don't know that I really feel comfortable  
23       with saying, Yes, we will do this. We will pay this,  
24       because, for me, there's a small part of me that says,  
25       Well, even though we are saying we didn't do anything

1        wrong, there's a small part that's admitting guilt. But  
2        that's not the way I am viewing this agreement and why I  
3        think it's time to settle.

4           This is casting such a long shadow over not only  
5        DFA and DMS and St. Albans Co-op, formerly Dairylea,  
6        it's all over this -- our industry. It's all over all  
7        the producers. We have got this lawsuit. We are such a  
8        minority. It was mentioned before only 46,000 dairy  
9        farmers left in the United States. Look at how few are  
10      left here in the Northeast. We need to work together.  
11      We need to build coalitions. We need to work with other  
12      organizations.

13           I think having this lawsuit here, not knowing where  
14      it's going to go, not knowing how many years this is  
15      going to last, is really hampering our efforts in this  
16      outreach program to get others to work with us as we  
17      look forward to having a brighter future for us as dairy  
18      farmers. So this isn't just a DFA or DMS thing. It's  
19      for all farmers and the uncertainty of where this  
20      lawsuit could bring us.

21           So, in closing, I thank you very much. I am really  
22      biting my tongue, resisting the urge to retry this case.  
23      There's things that I have heard today that I definitely  
24      don't agree with, but I think the point of today is what  
25      do we feel about this agreement, and I strongly,

1       strongly believe that it's in the best interests of all  
2       producers to -- to get this over with and move forward  
3       with this.

4           And even though in my letter I said I did not know  
5       all the intimate details -- I haven't been in court  
6       every single session -- I've paid very close attention.  
7       I didn't end up on a DIAC committee, I didn't end up  
8       chair of the national YCs by not paying attention to  
9       what is going on. I have a fairly good knowledge of  
10      what was going to occur, what has occurred, what's been  
11      alleged, and I still believe that this is the right way  
12      to go.

13           And there's a saying that I have used in the past,  
14      and I will use it again. There comes a point in time --  
15      there comes a point in time when you are sitting here  
16      wrestling over something and trying to win, the best way  
17      out for you to win that tug-of-war is just to go to your  
18      end of the rope and call it a day.

19           THE COURT: Thank you.

20           PAUL BOURBEAU: Thank you very much.

21           THE COURT: Anybody else who would like to  
22      speak?

23           Yes.

24           REG CHAPUT: Thank you, your Honor. My name  
25      is Reg Chaput, C-h-a-p-u-t. And I will try to be as

1       brief as I can possibly be.

2           So I farm in partnership with my brother Michael up  
3       in North Troy, Vermont. The name of the farm is Chaput  
4       Family Farms, and we milk a thousand cows at 2500 acres,  
5       and we employ 22 people.

6           I have been fortunate enough to have been born and  
7       raised on the farm. I'm 57 years old, so I guess that  
8       makes me the average dairy farmer, from what I hear.  
9           And other than a four-year stint in the Army, all my  
10      time has been spent on farms.

11           The last 35 years on my own, I have had the  
12      opportunity of being in three different co-ops and two  
13      independent handlers, so I have got a real good flavor  
14      of what options are available out there to market your  
15      milk.

16           And I am not a cynical person by nature, but I am a  
17      cautious person, so I -- it was important to me, when I  
18      got involved with Dairylea in 1997, to start becoming  
19      really involved with the co-op. So I have attended a  
20      lot of meetings, been on a lot of the committees.

21           And though I don't -- and I think I am the type of  
22      person that I like to ask the tough questions and hold  
23      people accountable, and I can say in all that time that  
24      I don't feel that there has been any reason to suspect  
25      that there has been any type of, you know, agreement to

1       harm in any way. I think they're always trying to make  
2       the best decisions in -- for all the co-op, even though  
3       I may not agree with everything that they say or agree  
4       to. I step back from that, I realize; a lot of times  
5       it's simply because it didn't impact me the way I wanted  
6       it to.

7           But I really think it's important to start moving  
8       away -- to settle this because it's been a real  
9       distraction for the co-op leadership, and it's taken  
10      them time away from, you know, putting programs in place  
11      that could help dairy farmers from searching for other  
12      milk marketing opportunities. And so I really feel that  
13      it's time to just put this to rest. And so that's all I  
14      have to say.

15           And thank you for your time.

16           THE COURT: Thank you.

17           Anybody else?

18           Yes, sir.

19           BILL ROWELL: My name is Bill Rowell,  
20      R-o-w-e-l-l. My brother and I milk 950 cows in Franklin  
21      County, Vermont. We produce 25 million pounds of milk a  
22      year. We are members of the St. Albans Dairy Co-op,  
23      which is part of the DMS system.

24           If you look at our dairy production ending 2014,  
25      you will see the United States produced 205.9 billion

1       pounds of milk. If you look at our export market of  
2 last year, you will see that we were exporting  
3 17 percent of that annual production. Today, that  
4 export market is down around 13, perhaps down as low as  
5 12 percent presently. That additional milk has to go  
6 somewhere.

7           I'm not a milk marketer. DMS has done a good job  
8 marketing milk, finding a home for it, for the best  
9 possible price under volatile market conditions. Food  
10 processors are notorious, like any other consumer, of  
11 trying to find the best possible price. Milk is the  
12 chief input for any dairy processor. They are going to  
13 buy it just as cheap as they can get it time and time  
14 again.

15           We worked for seven and a half years to change  
16 national dairy policy. That was a long road. We went  
17 to Washington many times, many, many times, traveled  
18 across the country many times, trying to get farmers to  
19 work together. That's a difficult project. It's --  
20 probably herding chickens would be easier.

21           We did get a safety net that the farmer can buy  
22 into. We did not get a management tool. So now when  
23 there's an oversupply of milk, which we're presently  
24 facing -- because feed is cheap, everybody's producing  
25 milk, grain is plentiful worldwide, and everybody in the

1       world is producing all the milk they can -- the market  
2       will finally get to the point where it can't absorb all  
3       of the milk. Who is going to market it?

4           And in the Northeast, we lack -- particularly in  
5       Vermont, we lack adequate infrastructure. In other  
6       words, we don't have an overabundance of processors. So  
7       who is going to market your milk under those conditions?

8           DFA built a plant in Nevada, last year or two, for,  
9       I think, around a hundred million dollars, and they are  
10       taking excess milk and making powder for export, trying  
11       to find a home at the best possible price for the milk  
12       in this country.

13          I'm apprehensive anytime that I do business with  
14       someone. You always question, is it the best deal? Is  
15       the integrity there? How do I do better? And I will  
16       tell you this: From my perspective, for the amount of  
17       milk that we are making, I would hate to have to market  
18       it, and I doubt that I could do better than what DMS is  
19       doing for us.

20          So I will stand with them, and I would like to see  
21       the lawsuit concluded because this lawsuit is casting an  
22       image over the entire industry.

23          Now, on our farm over the last six and a half  
24       years, we have had better than 20,000 people from 27  
25       countries tour the farm. And we often get comments

1       about the image of the dairy farmer and/or the dairy  
2       industry. It -- it brings into question the integrity,  
3       and doing so brings into question the quality of the  
4       product and into question animal care. And if we go  
5       down that road and stay in that rut for too long, you  
6       are really painting us with a kind of a dark brush.

7           I'd appreciate seeing this settlement, and I'd like  
8       to get moving forward on a more positive path.

9           Thank you, your Honor.

10          THE COURT: All right. Thank you.

11          Anybody else who wants to speak?

12          Yes.

13           MICHAEL SWANTAK: Hello. Michael Swantak,  
14       S-w-a-n-t-a-k.

15           I just want to read a brief definition of  
16       Capper-Volstead. February 18th, 1922.

17           "The Capper-Volstead Act from 1922 allows  
18       agricultural producers to form associations that allow  
19       producers to compete together in the marketplace."

20           I guess I should say I am not in favor of going  
21       through with this settlement for a lot of reasons, but I  
22       am just going to keep this brief. And if you look at  
23       what DMS and DFA have done so far, after what I just  
24       read, you would say no, they probably haven't broken any  
25       laws. Let me read further.

1           The act states that "persons engaged in the  
2 production of agricultural products as farmers,  
3 planters, ranchmen, dairymen, nut or fruit growers may  
4 act together in associations, corporate or otherwise,  
5 with or without capital staff, and collectively  
6 processing, preparing for market, handling and marketing  
7 in interstate and foreign commerce, such products of  
8 persons so engaged. Such associations may have  
9 marketing agencies in common, and such associations and  
10 their members may make the necessary contacts and  
11 agreements to effect such purposes."

12           Still, it's up to you if they have broken that law.

13           Now, there's one more little piece: "Provided,  
14 however, that such associations are operated for the  
15 mutual benefit of the members." And that right there, I  
16 have to say, yes, that's clear as it can be, but I think  
17 the books need to be open there and just do a little  
18 more digging into how they operate compared to what this  
19 piece of paper says.

20           And that's all I have.

21           THE COURT: Thank you.

22           MICHAEL SWANTAK: You want this?

23           THE COURT: If you give it to Jen, she will  
24 make sure that I get it, so you can come forward.

25           Thank you.

1                   MICHAEL SWANTAK: Thank you.

2                   THE COURT: Anybody else who wants to speak?

3                   All right. I have some questions for the  
4 attorneys, and we are going to hear from them.

5                   I have, obviously, read your papers. And I have a  
6 couple subject matters, in particular, that I am  
7 interested in your thoughts on.

8                   When this came before the Court for preliminary  
9 approval and it became clear to me that there was a  
10 division between class counsel and class  
11 representatives, I had a lot of questions for you about  
12 what happens, how does the settlement occur without  
13 authorization, can you settle over the class  
14 representatives' objections, and you both provided legal  
15 briefing on that.

16                  But this is not at all the typical case. I have  
17 had settlement of class action suits, obviously, before,  
18 and I am interested in your thoughts about what happens  
19 when the division is this marked and the class  
20 representatives are themselves fiduciaries and take a  
21 very different view of the value of the settlement.

22                  The release: I have a problem with the release.  
23 As a fiduciary to the class and having the  
24 responsibility under the law to look out for their  
25 interest, I just see this release as incredibly broad,

1       and it would even involve -- if the milk check was wrong  
2       and you could prove it, that would be extinguished. It  
3       includes a release of all of DFA and DMS's members.

4           I would have a hard time -- I couldn't discern who  
5       all is covered because I don't know who they have an  
6       ownership interest in or who's their affiliates. And  
7       it's a lengthy period of time, and it just is not a  
8       release that says all the claims that have been brought  
9       in this lawsuit or could have been brought in this  
10      lawsuit. It's far vaster than that. And I just don't  
11      see how it squares off with the monetary settlement.

12           So I am very concerned about the release, and I  
13      hadn't actually focused on the definition of the  
14      complaint, so I am thankful for Mr. Haar for referencing  
15      me back to the prelude to the settlement agreement that  
16      defines the complaint to include any pleading filed in  
17      this case. And how does that affect the release? Are  
18      we really talking about any mention of any matter in any  
19      of the papers filed in this court would be covered by  
20      the release? That would be astonishingly broad.

21           So I have a problem with the release, and sometimes  
22      those problems can be fixed and sometimes they cannot.

23           Injunctive relief: In ultimately granting  
24      preliminary approval, I made the comment that the relief  
25      in the settlement agreement is broader than what would

1       be ordered by the Court after a trial, and I only meant  
2       that at this point the injunctive relief claims have  
3       been narrowed to an injunction for anything either the  
4       Court or the jury finds unlawful. And you really don't  
5       need an injunction to enjoin unlawful conduct. It's  
6       unlawful.

7           So that isn't really a lot of injunctive relief.  
8       If a jury finds conduct is unlawful and somebody engages  
9       it in -- the next day, they have got a problem with or  
10      without a court injunction. So I saw this as different  
11      in kind as to what would happen at the end of the day.

12          But I am very concerned about the class  
13      representatives' careful reading of the injunctive  
14      relief and their representations that either they  
15      already do it, this is already on the website, this  
16      doesn't provide us with any benefit. So that is  
17      concerning.

18          I have been, obviously, your judge from the  
19      beginning, and we have had many pointed discussions  
20      about what is this case about. And truthfully, this is  
21      the first time I am hearing about the control of the  
22      testing and how test results may or may not be  
23      manipulated to produce certain results and cause  
24      retaliation, and what happens if you terminate your  
25      agreement but you have no place to go with your milk.

1           And certainly some of those points are raised, but  
2 one of the challenges in presiding over this case is the  
3 plaintiffs' kind of ever-evolving conspiracy, two  
4 layers -- first it was this act or that act -- and me  
5 trying to kind of corral it into something that was  
6 manageable, and explaining to plaintiffs' counsel, you  
7 know, you should be concerned if I don't understand your  
8 theory of the case, that should be very concerning to  
9 you, and having that conversation.

10          I just -- you know, one of the things that was  
11 brought up in the summary judgment motion and other  
12 times is this nonsolicitation agreement and co-ops  
13 should not be discouraging other co-ops from soliciting  
14 their members and there shouldn't be any spoken  
15 agreements, and you know that in Silicon Valley that was  
16 the focus of Judge Koh's decision and her rejecting  
17 approval of the settlement, and there was very strong  
18 proof in that case.

19          In this case, there has been strong proof, but I  
20 remember Mr. Kuney directing my attention to: Let's  
21 say, for the sake of argument, that happened. How does  
22 it translate into damages? How does it result in money?  
23 And I just didn't feel like the plaintiffs' expert could  
24 answer that question. It was somehow included in there.

25          So I am concerned about when I am assessing the

1       likelihood of success on the merits and how this would  
2       do at trial, that the class representatives have one  
3       case in mind, and I was presented with a different and  
4       much more wide-ranging and unwieldy case than they have  
5       talked about today. And how do I do that in evaluating  
6       what would have happened in trial and what are the  
7       likely ranges of recovery?

8           When the parties came to me and said, you know, we  
9       won't want any further opt-outs, I looked at the case  
10       law, and I said, yeah, this is -- we're pretty far along  
11       in the lawsuit. People have already had an opportunity  
12       to jump in and out of the class, and at this point  
13       there's no reason to let anybody opt out anymore. We  
14       have been here for years, and if they wanted to get out,  
15       we had opportunities to do that.

16           It gives me pause when I see a release of this  
17       magnitude and breadth to adhere to that position, to  
18       say, you know what, you are in it, and you are going to  
19       be releasing these claims, and you are going to have  
20       this very expansive release because you didn't get out  
21       when it was -- when the opportunity was there. So I am  
22       worried about that opt-out provision not being here in  
23       the settlement.

24           I am interested in your thoughts, which some of the  
25       parties -- or some of the speakers said, you know, we'd

1       be better off going to trial and losing because at least  
2       we wouldn't be giving up anything by way of the release.  
3       And in speaking to these issues, I am mindful of the  
4       people who spoke in favor of the settlement, and it's  
5       understood that settlements are the preferred way of  
6       resolving lawsuits, if it can be done fairly,  
7       reasonably, and adequately. There's lots of case law on  
8       that.

9           So I understand that's the backdrop, and we are not  
10      really talking about are settlements, in general, a good  
11      thing, but is this settlement a good thing. And in  
12      deciding this case, it's different because the  
13      challenges are not just the money's not enough, the  
14      injunctive relief is not broad enough, but many  
15      arguments that, "I wanted this case to go to trial and  
16      wanted the facts to be portrayed in front of a jury. I  
17      wanted this exposure, and that's why I was in it." And  
18      I haven't seen too many cases talking about that  
19      particular factor.

20           So in analyzing the fair, reasonable, and adequacy  
21      of the settlement, the courts don't talk about, but did  
22      the plaintiffs really want to go to trial and have their  
23      day in court, and did that get taken away from them.  
24      But that's a theme here, so I am interested in how you  
25      think I should be addressing that.

1           My comments are not intended to foreclose any of  
2 your own. Those are just some of the things that I am  
3 thinking about. And I am going to start with plaintiff  
4 for their arguments in favor of approving the  
5 settlement.

6           MR. PIERSON: Thank you, your Honor.

7           Your Honor, Kit Pierson for the DFA, DMS subclass.

8           Your Honor, this case, was started five years and  
9 three months ago. I think you had only recently come on  
10 to the federal bench. It's been obvious from the outset  
11 that the case evoked strong opinions and strong  
12 emotions. It evoked strong emotions and opinions by  
13 caring, serious people and, frankly, by people on both  
14 sides of the case.

15           Our job as counsel, your Honor, and as counsel for  
16 the DFA, DMS subclass, has been to look at the facts,  
17 look at the law, look at the probabilities and the  
18 prospects in an objective way, in a dispassionate way,  
19 in a sober way. That is not always an easy job in this  
20 context. It involves telling people things that they  
21 may not want to hear and making hard calls.

22           And what I'd like to do -- and I will try to answer  
23 the Court's specific questions in the context of this --  
24 is really walk through with you the Grinnell factors and  
25 the thinking that led to our analysis of this

1 settlement, your Honor. And I would start -- I would  
2 start with two overriding principles that I think are  
3 significant.

4 Number one is the notion, which your Honor  
5 reflected in the Dean settlement, and it's clear from  
6 the Second Circuit law, that there is a strong public  
7 policy in favor of settlement, and that's sort of --  
8 that's a starting point. It's not dispositive. It's a  
9 starting point.

10 The second starting point that I think is  
11 particularly applicable here is that there is a strong  
12 presumption in favor of the fairness, adequacy, and  
13 reasonableness of the settlement when three conditions  
14 are present.

15 When the settlement is the result of arm's-length  
16 negotiations, that's the first condition. That is  
17 clearly the case here. These parties wrestled with each  
18 other for five years. They were as -- the Court -- as  
19 we explained to the Court, there were sort of  
20 false-start settlement discussions over that period, but  
21 no one was quick to settle this case, your Honor. This  
22 was the epitome of arm's-length negotiations.

23 The second factor in applying the strong  
24 presumption is the stage of the case. Was there full  
25 discovery so that people had an opportunity to evaluate

1       the situation?

2                     THE COURT: So let me stop you on "arm's  
3       length" because the argument that I am hearing is, yes,  
4       until the money's on the table -- and the plaintiffs'  
5       counsel is asking for \$16.6 million -- that's when the  
6       arm's length disappeared. And the word "collusion" has  
7       been used today. I might define it differently than  
8       that. So I don't think at this point that that's  
9       uncontested.

10                  MR. PIERSON: Your Honor, it may be contested,  
11       but it is not accurate. You know, this case was hard  
12       fought for five years, and I have been fighting cases  
13       hard for 30 years from clients ranging from people in  
14       Guantanamo to Microsoft and everyone in between, and  
15       this case was no different in that respect, your Honor.

16                  What happened in this case, and the reason there  
17       was a settlement, is not unlike a number of other cases  
18       that all the experienced counsel in this case have been  
19       involved in. You know, we did not have what we regarded  
20       as a serious settlement offer, ever, or a settlement  
21       offer that we were prepared to accept or recommend to  
22       the Court, until we got to the eve of trial, which DFA,  
23       DMS looked at their risk and their position changed  
24       dramatically. It happened, frankly, the Friday before  
25       the final pretrial conference, which is why we wanted to

1       notify the Court right away.

2           And after that -- after that was really initiated  
3       by DFA, DMS, you know, there were a series of lengthy,  
4       lengthy phone calls with each of these subclass  
5       representatives. Now, they are free to disagree on the  
6       merits of that, but there is not the slightest question  
7       in my mind and Mr. Abrams', who is very involved and can  
8       explain himself. You know, this was hard fought, arm's  
9       length, you know, in the very essence of that.

10          And I will also tell you, your Honor, that a fee  
11       calculation was not a factor in my mind. It was never a  
12       factor in my mind. It's never been a factor in my mind.  
13       The Court will decide the appropriateness of the fee in  
14       this case. That's within the Court's discretion. But I  
15       make a decision in this case and other cases about  
16       whether to settle without that as a consideration. And  
17       that was -- and that was what was done here. So that  
18       factor is present here, your Honor.

19          The second factor was there a full discovery, you  
20       know, what we're really trying to get at there is has  
21       counsel -- have you been at this long enough that -- and  
22       have you had judicial rulings that gives you an  
23       opportunity to assess the pros and the cons and the  
24       risks, et cetera.

25          Your Honor ruled that that standard was met in

1 connection with the Dean settlement. We're years past  
2 the Dean settlement with a fuller discovery record, with  
3 comprehensive judicial opinions on some of the key  
4 issues in the case, and I am going to talk to you about  
5 those and the significance of those to our calculation.

6 But -- but, you know, you know, both the Court and  
7 our eyes were wide open in connection with this. I  
8 mean, it would be hard to find a case -- there are five  
9 million pages of documents produced in this case, your  
10 Honor. It would be hard to find a case where that was  
11 more easily satisfied.

12 The third criteria for the strong presumption is  
13 whether experienced counsel were involved. And,  
14 your Honor, this is a point that I want to emphasize  
15 because there were really five law firms involved in  
16 this, and they're law firms -- these are not law firms  
17 that are quick to settle cases. Exactly the opposite.

18 Mr. Abrams, you know, is one of the finest lawyers  
19 in the country, as is -- frankly, as is Mr. Kuney. Very  
20 experienced trial counsel. His reputation is he takes  
21 cases to trial. He is a member of the American College  
22 of Trial lawyers. He is a lawyer that knows when to  
23 take a case to trial and not.

24 The same is true of our firm, your Honor. We have  
25 taken -- I personally have taken a class action case to

1       verdict in the last two years. Our firm has -- and I  
2       supervise the antitrust group. I am the co-lead of  
3       at --

4                     THE COURT: So -- but let me ask you. I  
5       haven't seen the courts analyze whether a particular  
6       attorney's the type to take it to trial or not take it  
7       to trial. And I view the Dean settlement very  
8       differently in that at that point Dean said, Here's some  
9       money. We don't want to be involved, and we -- you  
10      know, we aren't going to participate, and we are going  
11      to have -- we are going to pay enough to get out of it  
12      early.

13                  And after the injunctive relief was dealt with,  
14       there really wasn't any opposition, that I was told  
15       about, to that settlement. So I don't think it's a  
16       question of will you take it to trial or not.

17                  MR. PIERSON: The question, your Honor, is  
18       whether -- is whether you can have confidence in the  
19       settlement because the judgment was made by experienced  
20       counsel. That's the question. Was this made by  
21       experienced counsel, or was it made by a bunch of  
22       novices?

23                  And the point I am making, your Honor, is that,  
24       viewed from a variety of perspectives, you have, you  
25       know, attorneys with a proven willingness to take cases

1 to trial. You have attorneys that have litigated in the  
2 Southeast for seven years, and Mr. Abrams can tell you  
3 everything you need to know about the differences  
4 between that case and this case, not the least of which  
5 was the statute of limitations.

6 You have two very fine law firms in Vermont, and  
7 you have David Balto, who has been in a senior position  
8 at the FTC, and my partner, Ben Brown, who was in the  
9 Department of Justice's antitrust division. So you have  
10 lawyers that have been on the defense side of cases, on  
11 the plaintiffs' side of cases. I have tried cases on  
12 the defense side. I have tried cases on the plaintiffs'  
13 side.

14 You have lawyers looking at this from a variety of  
15 perspectives, and those lawyers unanimously concluded  
16 that this was in the best interests of the settlement.  
17 And that's -- so I am not saying that the presumption is  
18 irrebuttable. What I am saying is that the Second  
19 Circuit and this Court recognized in its earlier  
20 opinion, I think citing one of those cases, that there  
21 is a strong presumption when those conditions are met,  
22 and they are clearly met here.

23 THE COURT: So let me ask you about that  
24 because I started off by saying this is unusual in that  
25 I haven't had a settlement of a class action where class

1       representatives who know a lot about the case -- they  
2       know a lot about the case. They are not people who have  
3       been kind of floating in and out and are on the caption  
4       and don't know what the case is about, and they don't  
5       share that level of confidence that you have, and that's  
6       unusual, and what do I do about it?

7           So usually when I'm analyzing are counsel  
8       experienced and otherwise competent and professional, I  
9       am talking about what I see, and I have already found  
10      that you are all capable of litigating this case. But  
11      we got a division here that doesn't exist in the  
12      ordinary case. And I assumed that your research was  
13      exhaustive when I asked you about it. Doesn't seem like  
14      it's come up a lot in other cases.

15           MR. PIERSON: Your Honor, there are numerous  
16      cases in the Second Circuit and elsewhere in which class  
17      representatives, sometimes unanimously -- which is not  
18      the case here; you basically have three farms opposed,  
19      one farm in favor -- but you have cases in the Second  
20      Circuit and elsewhere where there is unanimous  
21      opposition. And courts say that, you know, counsel has  
22      to make an independent judgment of the situation.

23           In all frankness, your Honor, I will tell you one  
24      of the reasons that's true here is because the case  
25      provokes such strong reactions because it involves

1       people's livelihood, and we understand that; that  
2       some -- that there are some facts and -- or there are  
3       some myths about the industry that just become  
4       unchangeable in some people's minds.

5           And I will give you an example of that. It was  
6       alleged earlier today that Dean has 70 to 90 percent  
7       market control in the Northeast. Your Honor, there is  
8       no evidence in the record -- not only is there no  
9       evidence in the record supporting that conclusion, it's  
10      simply not right. It's simply incorrect.

11          Now, if I, as a subclass representative, believe  
12       that there was 90 percent ownership by Dean here or 70  
13       percent ownership, the case would be a very different  
14       case, fundamentally different case, than the one you  
15       have in front of you. And, you know, it's a point that  
16       we have made, you know, over and over that it's -- you  
17       know, you -- it's not a mysterious -- certainly it was  
18       in our interest and in Dr. Rau- -- you know, it would  
19       have made sense for Dr. Rausser, if that face was even  
20       close to correct, we would have claimed it. It wasn't  
21       in our interest to downplay the market share.

22          But you can go to the plants, you can see their  
23       capacity, and both experts agreed on that. And that's  
24       why at the end of the day, your Honor, and I -- look, I  
25       have the utmost respect for the integrity and the

1 motives of the subclass representatives. You know, they  
2 have done the job we have asked them to do, and I  
3 applaud them for that. But at the end of the day, you  
4 know, there's a factual record here, and there's law,  
5 and it has to be taken seriously, and it has to  
6 inform -- it has to inform judgments.

7 And I will talk about that in a moment when I go to  
8 risk, but an example of that is, you know, your -- the  
9 Court has expressed some very serious concern in  
10 these -- in this case about substantive issues. And the  
11 Court's made rulings that have legal consequences for  
12 trial and for the risk to class members, and they have  
13 to be taken into account. And that's our job as  
14 lawyers: Even when people who care passionately about  
15 this and who we like, you know, wish those facts don't  
16 exist, we have to take that into account.

17 So let me turn to the 7 -- to the Grinnell factors,  
18 and I will try to do it in a relatively succinct way.  
19 The first factor is the complexity and expense and  
20 duration of the litigation. You know, I think that  
21 factor is pretty -- it's pretty self-evident. I have  
22 been doing this 30 years. It's about as complex a case  
23 as it gets, and there --

24 THE COURT: Well, let me ask about that  
25 because I am not convinced it had to be that complex,

1       and I was interested in member of the public's  
2 perception of my perception, and I hadn't read this  
3 newspaper article, about what to do with your summary  
4 judgment motion in opposition.

5           And it was such an overload of information and  
6 document dump that it would have been impossible for me  
7 to discuss each and every thing that was in that case.  
8 It would have been a year-long writing exercise. And so  
9 I started looking at documents that I thought did not  
10 match up with what you were telling me they said.

11          So you would say, This, you know, reflects their  
12 agreement to conspire. I'd look at the document; I'd  
13 say, This doesn't say anything of the sort. I don't  
14 understand where it is.

15          So I'm not so sure that the complexity was built  
16 into the case or it evolved. And if you will remember,  
17 we started out with one aspect of milk price, and I was  
18 like, That doesn't seem right to me. I am not a milk  
19 expert.

20          Yeah, you are right; it's not right. Here's a  
21 new mix. That doesn't seem right to me because really  
22 what you are looking at is that uniformity that's part  
23 of regulation.

24          Yeah, you're right, that's not -- and I told you  
25 that's not a good thing. That gives me a lot less

1       confidence because I can't -- I don't want to be  
2       second-guessing a national expert in economics about his  
3       theories. And I kind of felt I was in that position  
4       frequently. So I am not convinced that the complexity  
5       was inherent in the case as opposed to -- and may be an  
6       effective litigation strategy because it certainly made  
7       the defendants do a lot of work.

8                   MR. PIERSON: Your Honor, let me make a couple  
9       comments about that, and it's a dialogue we have had  
10      before. One is, I can assure you if there was a single  
11      document that sort of laid this all out and made the  
12      simple case like some price-fixing cases that we're  
13      involved in, I believe in litigating a case in a simple  
14      fashion if, in fact, the evidence will allow you to do  
15      that, if there is a single thing to point to.

16                  So, for example, you know, you heard reference  
17      today to milk testing or concern about milk testing.  
18      Your Honor, there were -- and Mr. Abrams can comment  
19      about the record in the Southeast, but, you know, we  
20      got voluminous discovery in this case, and there were 70  
21      depositions in this case and probably another 50 in the  
22      Southeast or 70 in the Southeast.

23                  You know, if there had been -- putting aside  
24      isolated, anecdotal and largely unproven assertions  
25      about that, but limited assertions about that, if the

1       evidence was there, your Honor -- you know, the critique  
2       your Honor has raised is that -- is that we threw too --  
3       in too many things, not that we didn't, you know,  
4       include things we should have included in. If the  
5       record had supported that, you know, we would have made  
6       that claim.

7           But with extensive discovery in this case, you  
8       know, it was, at best, a highly tangential issue in the  
9       case. That's the reality. And as an officer of the  
10      court, you know, I am not going to try to create  
11      evidence that doesn't exist, that --

12       You know, but the point the Court raises was a  
13      concern for us because we looked at the evidence --  
14      there's no single document that sort of lays this thing  
15      out, and we explained the evidence as fulsomely as we  
16      could. You know, here's our best evidence. Here is all  
17      our best evidence. And the Court expressed concerns  
18      about it.

19       And obviously, we have to make an independent  
20      judgment about that. And I remember one colloquy you  
21      had with me, your Honor, is, you know, the jury's not  
22      going to be able to understand this. It's hard to  
23      explain it. I remember you commenting it was hard to  
24      explain to the law clerk. And, you know, I took those  
25      comments really seriously. You and I have had very

1       intelligent, I think, dialogues over the last five  
2       years.

3           And when we present what we have found as the best  
4       evidence in this voluminous record, and the Court says,  
5       "It's confusing. It's too far reaching. I don't see.  
6       It, I think -- I don't see the inferences you are  
7       drawing from those documents," your Honor, I can agree  
8       or disagree with that, but I am certainly going to  
9       factor it in to the analysis of how a jury's likely to  
10      react to this.

11       And we did, your Honor. We took your comments and  
12      concerns very seriously. And if there was a simpler way  
13      to present this case, if there was a single smoking gun  
14      as opposed to sort of a broad conspiracy that involved  
15      lots of actors that had to be brought into it, we would  
16      have presented the simpler case.

17       But, your Honor, as much as, you know, particular  
18      plaintiffs may wish the evidence was like this, or there  
19      may be a lore in the Northeast that it's like this,  
20      we've got to go where the facts -- where the facts and  
21      the record led us, and that's what we evaluated it. And  
22      we evaluated it with your Court -- with the Court's  
23      concerns in mind.

24       The only other point I'd make about complexity,  
25      because it's raised by the Court's comments, there are a

1       couple aspects of this record that really do make it  
2       more complex even than -- I mean, I basically have been  
3       doing really complex antitrust cases my whole career.  
4       One thing that is unusual about this case, the  
5       regulatory structure is unusual. The market definitions  
6       are harder in this case, frankly, I think, than in a lot  
7       of cases.

8           But the odd thing about this case is even  
9       determining the price, which is an issue you reference,  
10      you know, and where is it, what's it -- you know, even  
11      when we sort of -- when everyone sort of got on board  
12      with the notion that it was over-order premium, then we  
13      had big fights with Rausser about whether he was  
14      measuring it properly and there was the location  
15      differential with Boston.

16           So it's not a case -- and I don't want to belabor  
17      the point because it was only one of many factors, but  
18      it's a really complex case.

19           The reaction of the class. Your Honor, I think  
20      this is -- this is significant, and I think it does  
21      counsel in favor of the settlement. You have heard very  
22      impassioned and prepared and well-meaning statements by  
23      several class representatives. The fact is that 8,859  
24      class members were notified about -- about the  
25      settlement, and they were notified in a way that was

1       approved by the Court. They received -- received the  
2       Court's opinion. They received direct mail notice.

3           And this is a case that, you know, people pay  
4       attention to. These are generally people that have  
5       filed claims before under the Dean settlement. People  
6       pay attention to this case. This is real money. This  
7       is not a coupon. It's not \$25 checks. It's thousands  
8       of dollars to people who -- you know, it matters.

9           And, you know, I respect anyone that objected to  
10      the settlement, but the reality is that of those 8,850  
11      people that got notified, you know, there were 10  
12      objections by people that don't understand because they  
13      are outside of Order 1, and that's a ruling the Court's  
14      already made, was a correct ruling, and that left --  
15      that left the three subclass representative farms and  
16      their various members who objected, and it left 14 other  
17      objections.

18           And, you know, we have commented on some of the  
19      deficiencies in those objections. Some were untimely.  
20      But I don't really care about that. Let's just take the  
21      number at face value.

22           THE COURT: So let's talk about that because,  
23      as my judicial colleagues and I are grappling with class  
24      action suits, and I have heard people say at conferences  
25      they ought to be abolished because it's just not

1       achieving the benefit that was intended, silence of the  
2       class is increasingly less used as that means everybody  
3       thinks it's great.

4           And one of the things I was thinking about over the  
5       lunch hour is, if you have a Pella window settlement,  
6       and you don't get what you want for your defective Pella  
7       window -- I have to go look at the case again, but I  
8       can't remember the facts -- what's going to happen to  
9       you? You are going to -- you don't get your -- your  
10      window fixed. You don't buy windows there anymore.

11          And the point here is, "These people control our  
12       livelihood. They have our milk checks in their hands,  
13       and they have the future of our ability to find a place  
14       to sell our milk." And you need to factor that in and  
15       the amount of courage it would take to get up here and  
16       talk about -- people use the phrase "complain about your  
17       boss to your boss."

18          So I don't think that courts are saying, with  
19       routine, like they may have previously, there's 5,000  
20       people in the class and I haven't heard anybody in this  
21       class action suit file an objection -- and I have had  
22       those class actions -- and that must mean all 5,000  
23       people are happy because you and I are getting class  
24       action solicitations at home, and we're not answering  
25       them either. So what about that?

1                   MR. PIERSON: I think that's a fair  
2 observation, your Honor, but I have a couple reactions  
3 to it.

4                   THE COURT: All right.

5                   MR. PIERSON: So let's take, as a given, 99.8  
6 percent, and I think that's basically the statistic.  
7 99.8 percent of the people that were contacted about the  
8 settlement with direct mail, with a court-approved  
9 notice, in your opinion, did not object. And that  
10 argument might have some force if only -- if it was only  
11 the DFA, DMS members that were not objecting.

12                  But here, about half of those people -- it may be  
13 more than half of those people -- do not sell their milk  
14 through DFA, DMS. So you have got thousands and  
15 thousands of farmers who, at least as the class  
16 representatives suggested, actually got a little less  
17 relief out of equitable relief. So if anyone had a  
18 right to complain or if anyone would be expected to  
19 complain, it would be those thousands and thousands of  
20 people.

21                  THE COURT: So let me ask you about that. I  
22 don't -- let's assume, for the sake of argument, I have  
23 the benefit -- I don't have to work with DFA and DMS,  
24 they are not doing anything to me, and you want to give  
25 me money, and I am going to say yes. I am going to

1 release them. I haven't had any kind of relationship to  
2 them, so I am not giving up anything.

3 How is that a factor that would make them more  
4 likely to object?

5 MR. PIERSON: Because, your Honor, a part --  
6 and Mr. Abrams can speak to this, but part of the whole  
7 premise of this case has been that those farmers had  
8 antitrust claims, and that, you know, under the  
9 settlement they are releasing their claims, and they  
10 have got to decide whether the benefits of the claim --  
11 the benefits of the case financially and in terms of  
12 equitably make it -- it's making sense for them to do  
13 that. And, you know, what you know is that 99.8 percent  
14 of the people that were informed of that, you know, had  
15 no objection to it at all.

16 And there are two other points I would like to make  
17 in connection with that. One is -- and this is  
18 significant, your Honor. You know, this notice was not  
19 only sent -- you know, this information has not only  
20 been sent to the -- to the class members. It was also  
21 sent to attorney generals in 10 states, including  
22 Vermont; it was sent to the Department of Justice; it  
23 was sent to the Attorney General for the District of  
24 Columbia, none of whom have said that this is  
25 unreasonable, that it's insufficient, that it's

1       wrong-handed. None of them.

2           And you may remember, in connection with the Dean  
3       settlement, the Vermont AG -- and we talked to the  
4       Vermont AG's office about the case frequently over the  
5       years and about the settlement. You may recall that  
6       they did come in, in connection with the Dean  
7       settlement, and raise concerns about whether the money  
8       was sufficient. None of those entities have raised  
9       objections.

10          The other indicia you have here, your Honor, is --  
11       you know, the fact of the matter is, even though the  
12       deadline for submitting claims is not till the end of  
13       May, you know, 600 farmers have already basically voted  
14       with their feet by filing -- I think the number's 576 --  
15       by filing claims. So you have got 576 people that are  
16       already standing in line saying, I'd like the benefits  
17       of the settlements, versus, you know, really, frankly, a  
18       fairly *de minimis* -- I would say a *de minimis* level of  
19       objections.

20          You know, give that factor whatever weight you want  
21       to, your Honor, because I, frankly, think there are  
22       other factors that may be more important, but I do think  
23       that factor supports settlement here.

24          The third factor, the stage of proceedings, I don't  
25       need to belabor it. We are obviously -- that factor is

1       obviously satisfied. We are late in the game here.

2           I do want to talk about the risk factors that went  
3       into our analysis. And there were several and they are  
4       significant.

5           THE COURT: Would you agree with Miss Haar  
6       that there was really no risk that you would lose class  
7       certification in the midst of trial?

8           MR. PIERSON: You know, your Honor, I wouldn't  
9       say -- I wouldn't say that that is not a risk, in all  
10      honesty, and there's a couple reasons for that, because  
11      we are fighting that issue in basically every court in  
12      the country, including the courts of appeals.

13           There were two risks, your Honor. Number one, DFA,  
14      DMS had made it clear in their motions *in limine*, that  
15      they were continuing to contest that, and, you know,  
16      they -- as they have a right to, because the Court can  
17      revisit the issue. And what was going to happen at  
18      trial, I think, we all know, is that they were -- I  
19      mean, I think they had listed 30 or 40 farmers as  
20      witnesses, if not more. And they were going to get on  
21      the stand and praise DFA and praise DMS, et cetera. And  
22      they clearly were going to raise that issue again,  
23      your Honor.

24           And the second point is that if we got a jury  
25      verdict, there is not any -- there's zero question in my

1       mind that it would have been raised on appeal because,  
2       you know, your original ruling -- you know, the Court's  
3       struggled with it. The Court wrote two comprehensive  
4       opinions, and I think pretty close issue in the Court's  
5       mind was -- was my sense, maybe -- I am not trying to  
6       read your mind, but it was an issue, and it was going to  
7       be raised on appeal.

8           So I would not say it was the foremost risk we were  
9       concerned about. It was a risk.

10          Here are the foremost risks that I would -- that I  
11       would say we focused on. The first was one that  
12       your Honor has raised, which is the statute of  
13       limitations issue. And you have raised it at every  
14       juncture of the case.

15          As you know, you know, farmers, for years, didn't  
16       pursue these claims until -- you know, until we agreed,  
17       really in 1990 -- end of 2009, I guess, when the case  
18       was filed or -- when we -- or 2011, whenever it was, a  
19       long time ago. You know, the conduct here goes back to  
20       1998, and the concern that your Honor repeatedly  
21       expressed was, you know, what about damages outside the  
22       four-year limitations period?

23          And you expressed serious concerns about that from  
24       two perspectives. You know, one, legally do you guys  
25       get over the bar? And, two, even if legally you get

1       over the bar, I would say you expressed skepticism about  
2       whether there really was a fraudulent concealment case  
3       here. And you allowed us to go forward on that at  
4       summary judgment, and we understood that.

5           But we also understood that your Honor had  
6       commented that we bore a heavy burden on that issue,  
7       that the jury was likely to be instructed that we bore  
8       the burden on all those issues, and that your Honor had  
9       expressed skepticism at various points about whether,  
10       given this record, we could really get over that bar.

11          So I am not saying that was dispositive, but we  
12       understand that for the claims outside the four-year  
13       period that was an issue that had -- that the Court had  
14       taken very seriously and we would have to take very  
15       seriously.

16          For claims within the four-year period, those  
17       claims had statute of limitations issues, too, that we  
18       had to grapple with. We posited three theories for why  
19       damages -- those damages were recoverable. One was  
20       Berkey Photo. One was speculative damages, which were  
21       actually the two theories that we pushed the hardest,  
22       both of which the Court ruled against on summary  
23       judgment.

24          The third theory was continuing violations, which  
25       the Court allowed us to move forward on but with the

1       limitations that are applicable to that doctrine, and  
2       some pretty strong language about that that's -- you  
3       know, that the Second Circuit has taken a very narrow  
4       view and restricted it to quite compelling  
5       circumstances.

6           So the statute of limitation issues, which  
7       essentially were not issues in the Southeast, were --  
8       that's a risk factor we had to take very, very  
9       seriously.

10          The second cluster of risk factors has to do with  
11       other rulings by the Court, one of which -- and it's an  
12       important one, and I will talk about it a little bit  
13       when I talk about the amount -- the monetary amount of  
14       the settlement -- was that -- that certain damages in  
15       the case, which the defendants had estimated at  
16       approximately a third of the claimed damages, were not  
17       recoverable because they were umbrella damages.

18           And the Court, in fact, ruled on that issue and  
19       ruled adversely to us. So it was more than a risk. It  
20       could have been an appeal issue. But it was a ruling we  
21       had to grapple with, and it went directly to the  
22       recoverability.

23           Secondly, you had expressed concerns, as we  
24       discussed earlier, about the theory that  
25       comprehensive -- whether it would be comprehended by the

1       jury and whether -- whether the inferences we were  
2       asking for from the evidence -- they were not persuasive  
3       to you. And the fact that they -- that you had concerns  
4       about it meant that there was a good chance some of  
5       those jurors would have it.

6                     THE COURT: Let me ask you about the damages  
7       again. We had a couple numbers float by, and do you  
8       agree that, when you were going into trial, you had  
9       settled on a request for 340 million that could  
10      potentially be trebled, or do you disagree with that?

11                  MR. PIERSON: Let me answer it in a -- in a  
12      somewhat -- I agree with the 340 -- well, actually, I  
13      need to modify that. Let me walk you through my  
14      analysis of the numbers. Okay?

15                  So starting principle is, in evaluating a  
16      settlement, you have to start -- you have to analyze it  
17      relative to single damages. The Second Circuit has --  
18      Second Circuit said that in Grinnell that it is improper  
19      to view it in terms of treble damages, and that has been  
20      repeatedly held. So the starting number, your Honor, is  
21      341 million.

22                  The umbrella ruling issue, the umbrella ruling,  
23      according to the defendants' perspect- -- from, you  
24      know, the defendants said -- your Court -- the Court  
25      accepted their position on umbrella damages. They said

1       that knocked out a third of the claimed damages. So  
2       that gets you down to about \$230 million in cognizable  
3       damages, your Honor. 40 percent of those damages,  
4       about -- which is about 90 -- I think it's 92, 93  
5       million dollars, are outside the four-year limitations  
6       period. So those damages are only recoverable if you  
7       win on fraudulent concealment. The remaining damages  
8       that are within the four-year period I think come out to  
9       about 135 or 140 million dollars, your Honor.

10           So that's -- you know, you get all -- and then that  
11       is subject to all the other risks in the case. That's  
12       subject to the risk that they put 25 farmers on the  
13       stand and the jury is unconvinced that DFA's done  
14       anything wrong here. It's subject to their challenges  
15       to Dr. Rausser's testimony. It's subject to issues  
16       about -- about the market definition. It's subject to  
17       all -- it's subject to their defenses about which  
18       companies -- which conspirators were actually in the  
19       case and is it a narrower conspirator that's been  
20       alleged and does that mean other damages are umbrella  
21       damages?

22           So, you know, if we win all the statute of  
23       limitation issues, the damages are 231, you know, if  
24       you -- if it gets limited to the four years, you are at  
25       140. And then you have all the risks below that. And

1       we are talking about a settlement here, your Honor,  
2       which is \$50 million in addition to the \$30 million  
3       already recovered, so it's 80 million dol- -- and the  
4       30 million would be an offset against any treble damage  
5       award that comes out of the case.

6           So you are talking about a \$80 million recovery  
7       with that amount of damages in play. You know, we are  
8       not talking 4 percent, 5 percent. We are talking about  
9       the recovery of a very substantial percentage of damages  
10      here in a case in which the risks of financial recovery  
11      were very, very high.

12           The other risk factor that I want to mention,  
13       your Honor, has to do with the risk of delay. To be  
14       frank with your Honor, your Honor's ruled on a lot of  
15       tough issues in this case, and a lot of -- and probably  
16       a lot of issues that could have gone either way,  
17       reasonably could have gone either way. And what it  
18       inevitably meant, your Honor, was that whatever happened  
19       at trial, whatever happened in post-trial motions, there  
20       were going to be appeals regardless of -- regardless of  
21       who won. And certainly in the scenario in which the  
22       plaintiffs win there were going to be appeals.

23           And my experience is that means -- in a case with  
24       this much at stake, it means an appeal to the Second  
25       Circuit. If it's denied for the defendants, it means

1 request for *en banc* review followed by a cert position.  
2 My experience, your Honor, is that is a two- or  
3 three-year process, and that's if we win. There's no --  
4 if we win. There's no relief and no payment for  
5 probably a two-and-a-half-, three-year period.

6 If the case gets reversed and sent back for  
7 retrial, which is not uncommon in an antitrust case of  
8 this complexity, where your Honor has to make so many  
9 hard calls -- if the case gets reversed for a new trial,  
10 with the possibility of further appeals, we could be  
11 talking five to ten years before there's any relief or  
12 anyone gets paid. And that -- that was another factor  
13 that it would have been irresponsible -- irresponsible  
14 not to weigh, your Honor.

15 The issue -- the next Grinnell factor is the  
16 ability of the defendants to withstand judgment, and I  
17 don't think -- I don't think that was a major factor in  
18 our calculation, to be honest with you. I don't think  
19 it was -- not entirely clear that they could have  
20 withstood the higher end, but I think the record -- we  
21 proceeded on the assumption that they could pay a  
22 judgment.

23 I talked about the reasonableness of the financial  
24 amount -- the range of the financial amount. I'd like  
25 to talk about the equitable relief that was obtained in

1       the case, and there's several points I want to  
2 highlight.

3           The first is that one component of the equitable  
4 relief, your Honor -- and it was a really -- it was an  
5 important component here, was that the  
6 nonsolicitation -- the settlement agreement prohibits  
7 nonsolicitation agreements going forward. And it does  
8 so without time limit; that the FSA provisions in the  
9 agreement are limited to the term -- basically to the  
10 term of agreement in time so that the FSA provisions  
11 basically have a two-year period.

12          The nonsolicitation group -- the nonsolicitation  
13 provision moves forward. And frankly, your Honor, as I  
14 reviewed -- as we reviewed the record in this case, you  
15 know, nonsolicitation in the industry, this is -- it's  
16 been a -- from our perspective -- the defendants  
17 disagree and would have contested at trial, but, you  
18 know, we emphasized that a lot. We thought it was a  
19 major part of the liability evidence.

20          And I know your Honor had questions about how it  
21 linked up to the damages, but I know the Court had also  
22 said, if I read your remarks correctly, that when you  
23 looked at the record, this was the one part of the  
24 record -- you had some questions about some other  
25 inferences, but this was the one part of the record that

1        seemed problematic. And I completely agree with that  
2        assessment. And, you know --

3                 THE COURT: So let me give you the devil's  
4        advocate. They know they are not supposed to be doing  
5        that. The judge has already said this looks like a  
6        meritorious issue. I don't know how it translates into  
7        damages.

8                 How much do you gain in a settlement agreement that  
9        says, "Don't do that," when they're kind of already on  
10       notice that that's probably something they need to  
11       refrain from? And then I'm -- one of the points raised  
12       is, how is this enforced? Who has the burden of proof?  
13       Who's monitoring it? How do we know whether it's  
14       happening or not?

15                MR. PIERSON: Well, you know, your Honor, it's  
16        enforced like any other provision in the settlement.  
17       The settlement provides, you know, the Court has  
18       continuing jurisdiction. So one of the early  
19       allegations in the case, Mr. Haar learned -- correctly  
20       learned -- of this unwritten agreement that existed, and  
21       it was one of the facts that he brought to our  
22       attention.

23                So, you know, it is a world in which there's an  
24        exchange of information of -- you know, fairly  
25       suspicious crowd up there. I mean, people are looking

1       for things. So -- but it's like any other provision in  
2 a settlement. If there's a -- it's -- a settlement is a  
3 contract. If they violate the Court keeps continuing  
4 jurisdiction. If there's a violation, they can raise it  
5 with the Court, and the Court presumably will issue a  
6 show cause to show why it hasn't been violated.

7           And, frankly, if someone came to us after the  
8 settlement was put in place and said, "I think there's  
9 been a violation of the settlement agreement," we would  
10 assess it, and we would do something about it. So  
11 that's the short answer to your question.

12           I digress just for a second on that point. You had  
13 raised the issue about the case out in Silicon Valley in  
14 which the settlement was originally not approved. I  
15 think the Shervi (phonetic) settlement, which I may be  
16 -- may be approved. But that -- the reason that  
17 settlement wasn't approved -- there are two fundamental  
18 differences. Number one, the Department of Justice in  
19 that case had already weighed in and said, I think the  
20 way you are doing this in this industry is illegal.

21           I think the defendants here -- I don't think  
22 they -- I think they were contesting whether they had a  
23 nonsolicitation agreement. It's not clear to me they  
24 were conceding the illegality of it because there is law  
25 that creates arguments both ways on that. It was not

1       clear to me they were conceding the illegality, even  
2       if -- even if it was proven. So that's one difference  
3       with the Silicon Valley case.

4           But the fundamental difference with the  
5       Silicon Valley case is that the problem in the  
6       settlement there was that the plaintiffs had settled at  
7       a high number in terms of the percentage of the damages  
8       early on in the case. Let's just call it 20 percent.  
9       That's not the exact number, but let's call it 20  
10      percent of damages. And then everything went well in  
11      the case for them.

12           And the next defendant comes along two years ago,  
13       and they say, Okay, we are going to settle with you for  
14       10 percent. And that's what bothered the judge was that  
15       the -- it made no sense, given that everything had gone  
16       well, that suddenly they were settling for substantially  
17       less than they'd settled for earlier.

18           This case --

19           THE COURT: But I recall last time we were  
20       here, I said -- I was commenting on that, and somebody  
21       told me, Well, there's a writ of mandamus, and she  
22       shouldn't have done that, and she shouldn't have been  
23       looking at the case in that way.

24           And you know what a writ of mandamus is, and I do,  
25       and that's the circuit court saying you have overstepped

1       your power as a judge.

2                   So did the Ninth Circuit issue a writ of mandamus?

3                   MR. PIERSON: I don't think so, your Honor.

4                   And, frankly, I mean, I don't think I said that because  
5                   I --

6                   THE COURT: I am not saying you said it.

7                   Somebody said, Don't rely on that. There's a request  
8                   for a writ of mandamus. You know, that's way beyond  
9                   what Judge Koh should have been doing.

10                  MR. PIERSON: Yeah. And, frankly, I don't --  
11                  the reason -- see, I don't have a problem with that  
12                  analysis. So, for example, here, if we had settled with  
13                  Dean for \$75 million, a hundred million dollars, and we  
14                  came in and said, You should accept the settlement, two  
15                  years later, even though, you know, we don't -- we  
16                  haven't walked the smooth path that Silicon Val- -- we,  
17                  you know, have walked an up-and-down path in which we  
18                  have taken some hits, had some rulings that helped us  
19                  and some rulings that hurt us significantly.

20                  And -- but be that as it may, if we were coming in  
21                  here saying, you know, accept a \$50 million settlement,  
22                  even though you accepted a hundred million dollar  
23                  settlement two years ago, you and I both would be  
24                  scratching our heads about this.

25                  This situation is exactly the opposite. Here, you

1 know, Dean settled for \$30 million. This settlement is  
2 67 percent larger, it's \$50 million, and that's the  
3 case, notwithstanding the fact the umbrella ruling  
4 potentially knocks a third of the damages out of the  
5 case. The statute of limitations issues are what they  
6 are. Rausser's -- Rausser's taken some hits.

7 So it's really -- it's really, I would say, almost  
8 exactly the opposite of the situation out there. So I  
9 don't want to -- you know, I don't want to overemphasize  
10 that. I just think it's a fundamentally different  
11 situation.

12 So point one about the equitable relief is that it  
13 deals with a nonsolicitation problem in a way that is  
14 enduring, is as enforceable as any settlement provision,  
15 and if the case had gone to trial and there had been a  
16 defense verdict, it would have been a validation -- the  
17 notion that there was no risk in going to trial and  
18 losing and that wouldn't have resulted in bad things,  
19 it's just fundamentally wrong.

20 If this case had gone to trial and they had won,  
21 farmers that wanted practices at DFA and DMS to change,  
22 including nonsolicitation, they would have been nowhere.  
23 And not only would they have been nowhere, it would have  
24 been *res judicata*.

25 The second aspect of the settlement agreement is

1       the full-supply agreement. And the important point I  
2       want to make about the full-supply agreements is, you  
3       know, there's this notion that was expressed that Dean  
4       controlled 70 to 90 percent of the market. That's just  
5       wrong.

6           What the full-supply agreement provision does is  
7       say, you know, for the next two years, you are limited  
8       to the full-supply agreements in Schedule A. And our  
9       best calculation, your Honor, is that that's about 30  
10      percent of the market. It may be slightly less; it may  
11      be slightly more, but it's about 30 percent of the  
12      market, which leaves 70 percent of the market in play,  
13      particularly with these nonsolicitation provisions gone.

14           And, you know, that was presented to all the -- to  
15      all the state attorney generals and the Department of  
16      Justice. You know, no one has expressed concern about  
17      that as sort of an appropriate way to deal with that  
18      issue.

19           THE COURT: So let me ask you about that  
20      because the full-supply agreement provision says you can  
21      keep what you have and renew it, and you can't have new  
22      ones during this time period. And I am hearing, Well,  
23      that's exactly what we are worried about, what you have  
24      in place and what you have the ability to renew. And  
25      that is the focus of this case. It's not future

1 supply -- full-supply agreements. It's what's on the  
2 ground now and how it's affecting the market. What  
3 about that?

4 MR. PIERSON: Your Honor, if the agreement  
5 preserved more than 30 percent -- more than 30 percent,  
6 that would -- that would raise a significant concern,  
7 and it would have raised a significant concern to the  
8 state attorney generals. But when it's 30 percent and  
9 when it's been presented to the Department of Justice  
10 and attorney generals in every state that's been  
11 affected, and no one has said that is an insufficient,  
12 inadequate way -- unreasonable way to deal with this  
13 problem, that's a -- that's a reasonable term of  
14 settlement, your Honor.

15 The other provisions I wanted to comment on was  
16 there are a number of the provisions that go to the  
17 integrity of the financial information presented by DFA,  
18 which has been an issue -- you know, it's not at all  
19 clear that that's relief that could have been ordered.  
20 Even if the case was successful, that requiring them to  
21 do their statements in connection -- pursuant to GAAP,  
22 et cetera, requiring --

23 I mean, one way to view this -- I guess a good way  
24 to express it is, you know, look at this like a  
25 Sarbanes -- Sarbanes-Oxley provision. And, you know,

1       corporate America is not happy about the Sarbanes  
2       requirements, people certified, et cetera, et cetera.  
3       You really gotta look at those provisions about the  
4       integrity of the financial information collectively.

5           They require, without time limit, the use of a  
6       national accounting firm, which has independent -- you  
7       know, which has its own liability risks, et cetera, et  
8       cetera. So they are required to do that. They are  
9       required to conform to GAAP, which is fundamental to  
10      financial integrity and is -- and they're under no such  
11      requirement right now.

12           And, thirdly, senior management and the  
13       independent -- and the auditors committee are required  
14       to certify, are required to affirmatively represent that  
15       they are responsible for the preparation and integrity  
16       of the financial state- -- of the financial statements.  
17       So that's really where the Sarbanes-Oxley piece kicks  
18       in. That isn't required right now, and --

19           THE COURT: So -- and I agree with you that I  
20       would not be taking that kind of micromanaging effort in  
21       injunctive relief after a trial in which you prevailed,  
22       especially since you didn't ask for that, but the  
23       argument on the other side is, yes, and if we find  
24       something, we have released it. So it's great to know  
25       what's going on, but that release wouldn't allow us to

1 do anything about that. What about that argument?

2 MR. PIERSON: I'm sorry. I am not --

3 THE COURT: So you have got a financial  
4 disclosure. We are going to find out about this. But  
5 we are not going to be able to do anything about it.  
6 And I know that the release is not for future claims,  
7 but what about that argument?

8 MR. PIERSON: That's the point, your Honor.  
9 That is a provision -- injunctive relief, you know,  
10 fundamental -- I mean, we dealt with anticompetitive  
11 conditions, really, I think, about as well as we could,  
12 and really the only compromise that could realistically  
13 have been achieved here. Those provisions are really  
14 going-forward issues, to --

15 So we try to deal with a couple aspects of this.  
16 Sort of there are issues about which Mr. Haar, in  
17 particular, was quite concerned about, about corporate  
18 democracy, financial integrity, transparency of the  
19 records. And, you know, as in any case where you are  
20 dealing -- you know, injunctive relief is designed to  
21 stop illegal behavior in the past, but it's also  
22 designed to address issues going forward. And none of  
23 those provisions were time limited, your Honor.

24 They were real concerns that Mr. Haar expressed to  
25 us. They were things that could not have been achieved

1 at trial. And they're a significant provision. I mean,  
2 corporate America is in an uproar about Sarbanes-Oxley.  
3 So those are significant provisions.

4 The other provision, your Honor, that I wanted to  
5 emphasize was -- was this disclosure of the factual  
6 record here, which is substantial. I mean, you know, we  
7 don't want to release five million pages of documents to  
8 the public. I don't think the Court would have wanted  
9 it, the third parties involved wouldn't want it, et  
10 cetera.

11 But pretty much all the bad evidence in the case is  
12 in the summary judgment pleadings, and if it wasn't  
13 there, it was in the class certification proceedings.  
14 And, you know, as a term of the settlement, we  
15 negotiated the ability to release that information. And  
16 it will be -- I am confident it will be posted on the  
17 Vermont Attorney General's website, just as they posted  
18 earlier information.

19 And that has -- that has implications for farmers.  
20 It has implications for the public. And perhaps most  
21 importantly, it has implications for law enforcement  
22 agencies and legislatures. And part of our view about  
23 this case all along, your Honor, has been to get that  
24 evidence out there; that at the end of the day -- you  
25 know, it is not realistic for the Court to be managing

1 milk markets for the next five, 10, 15 years. At the  
2 end --

3 And I think there's probably agreement on that,  
4 that a lot of the solutions here, at the end of the day,  
5 need to come from antitrust law enforcement agencies,  
6 need to come from state legislatures, need to come from  
7 farmers making informed choices. And that's -- that's  
8 what that's designed to do.

9 Now, there are a couple of broad points I would  
10 like to make about the equitable relief. One is that  
11 the equitable relief achieved here is somewhat greater,  
12 from my perspective, than the equitable relief achieved  
13 in the Southeast, which was approved as fair,  
14 reasonable, and adequate on a -- frankly, on a stronger  
15 record. You know, this is broader relief in the sense  
16 that it deals with nonsolicitation, which the Southeast  
17 didn't deal with at all, which was a major part of the  
18 evidentiary record here.

19 It is broader than anything that was done in the  
20 Dean settlement. You will remember that we tried to  
21 take one step in that case, and it resulted in a lot of  
22 divisions about how to handle FSAs. And so the Dean  
23 settlement, which was approved by the court as fair,  
24 reasonable, and adequate, doesn't have -- doesn't have  
25 any kind of injunctive provisions like that. So this

1       settlement goes beyond both of those settlements, which  
2       were -- which were approved.

3           It was sent to every relevant law enforcement  
4       agency, state and federal, that regulate this order.  
5       None of them said those provisions are insufficient.  
6       There are other provisions you should be considering.  
7       Nobody, including the Vermont Attorney General's Office,  
8       raised any concerns --

9           THE COURT: Well, I would think it would be an  
10       overstatement that they got intimately involved in the  
11       Dean settlement.

12           MR. PIERSON: Excuse me?

13           THE COURT: They did not get intimately  
14       involved in the Dean settlement either, and I don't see  
15       them popping up in other cases. So I assume you didn't  
16       get a lot of input in the Southeast milk case from them  
17       either.

18           MR. PIERSON: Yeah, I would say -- well, I  
19       can't speak for the Southeast milk case, but what I  
20       would say, your Honor, is that -- so, for example, when  
21       Vermont intervened earlier in this case -- they do look  
22       at the settlement, and they do discuss -- and they do  
23       discuss these terms with us.

24           But I recall, because I looked at the letter the  
25       other day, when they intervened in connection with the

1       Dean settlement, they specifically said that sometimes  
2       they intervene, sometimes they don't. They look at  
3       these settlements, and, you know, for the state of  
4       Vermont, the milk industry is central. This is not --  
5       this is not a window frames or whatever. This is -- you  
6       know, this is a highly political issue that people  
7       are -- people are paying attention.

8           So, your Honor, you are going to have to make a  
9       judgment about how much weight to give that. But all I  
10      am saying is that you had some very experienced,  
11      hard-working antitrust counsel that made a judgment  
12      about this, and you had -- it's sent to every law  
13      enforcement agency, which, under CAFA, we are required  
14      to send it. We probably would have sent it to them  
15      anyway. But, you know, there's a framework set in place  
16      for them to review it.

17           And I can't -- certainly outside of Vermont I can't  
18      make represen- -- and even within Vermont I can't make  
19      representations of how they do their job or whatever.  
20      What I can tell you is there's a mechanism in the law,  
21      in CAFA, to get them this information so they can review  
22      it, so they can let a court know if they have -- they  
23      have any concerns about its sufficiency, and none of  
24      them, at the state or federal level, has raised any  
25      concern about it. No one's raised concerns to us. No

1       one's filed any concerns with the court.

2           So the reality with this equitable relief,  
3       your Honor, is that, you know, you can -- I guess there  
4       is one other point I want to address, and then I'll -- I  
5       want to make sure I have answered all the Court's  
6       questions. But here's the other point I wanted to make.

7           You know, you know, a colleague of mine told me  
8       once -- and you've probably heard the same expression --  
9       don't let the perfect be the enemy of the good. And  
10      there -- you -- one can always point to some provision  
11      and say, well, this could have been a little better or  
12      that could have been a little bit better.

13       But if you -- you know, one of the frustrations  
14      that I have had is -- in sort of working through what I  
15      think is a really good settlement, and -- I think it's  
16      an excellent settlement. It's not just a pretty good  
17      settlement. I think it's really -- it's an excellent  
18      settlement.

19       One of the frustrations I have had is when you try  
20      to sort of tie down, well, what is it you'd like to have  
21      happen here, other than what's happening? I kind of  
22      made notes about a couple things that were mentioned  
23      today, which seemed to be sort of the guts, other than  
24      what I would describe as sort of, you know, minor points  
25      about, well, they are already doing that, or they may

1       not be required to do in the future but they are kind of  
2       doing it now, I would -- and I don't mean this  
3       disrespectfully. Some of those I kind of put -- I just  
4       don't think those are really material criticisms, but  
5       there were a couple things they mentioned.

6           They mentioned there should be controls on  
7       nonsolicitation. Well, there are controls on  
8       nonsolicitation. And I don't really know what more we  
9       could have done with that than -- we have done it. We  
10      have got a blanket going-forward provision subject to  
11      court enforcement.

12           There was a lot of talk about milk testing. And,  
13       your Honor, the reality is there just -- it hasn't been  
14       a major part in the case because there just wasn't --  
15       you know, we had five million pages of documents. If  
16       there was a strong evidentiary basis -- you know, to a  
17       flaw, we included things in this case.

18           THE COURT: Well, let me tell you the kind of  
19       ballpark appeal of it. DFA, DMS controls the testing.  
20       The testing is done at the time the truck picks up the  
21       milk. The milk goes thereafter. There's no retesting.  
22       And you have to have confidence in the tester. So why  
23       not say, You know what? A lot of other industries have  
24       independent labs doing that, and why can't you divest  
25       that part of your business and -- or outsource it or do

1       something so it's in independent hands? And then when  
2       we're told that we contaminated a truckful of milk and  
3       we have to pay \$20,000, it's on us.

4           So that's a lot to ask, but I didn't -- I have  
5       never even heard that request before today. I hadn't  
6       heard that was something that was that important to the  
7       people that were primarily the source of information to  
8       you.

9           MR. PIERSON: Your Honor, if -- if -- the case  
10       has been going on for five years. The class reps are --  
11       are not shy. You know, if they had -- you know, they  
12       saw the summary judgment papers. You know, they saw  
13       their argument. I mean, if there were, you know,  
14       concerns that -- the only concern that was ever really  
15       raised -- and it goes to a point Mrs. Haar raised --  
16       was, Gee, why aren't you making more of DFA ownership of  
17       processors in the Northeast? I mean, I think from their  
18       perspective -- and, again, there's a certain lore in  
19       the issue.

20           THE COURT: Let me say, they have asked to  
21       speak directly to the Court, and I try my best to  
22       respect the attorney/client relationship, because it  
23       comes up, especially in criminal cases, where somebody  
24       says, Can I just talk to you without my attorney? And I  
25       have to explain that that might not be in their best

1       interests. But they did make efforts to have that  
2       direct conduit. So I don't know what they were going to  
3       say.

4           But when we were talking about the Dean settlement  
5       hearing and other instances, I do remember taking a  
6       break and allowing you to talk to them about their  
7       desire to talk to me.

8           MR. PIERSON: Well, you know, your Honor,  
9       what -- fair enough. I don't disagree with anything you  
10      just said. The problem for us, as lawyers, your Honor,  
11      is that, you know, we gotta go where the evidence takes  
12      us. And, you know, the evidentiary record did not  
13      support making that a substantial part of the case. I  
14      mean, it's been raised as -- you know, there was one  
15      person, I think the farmer in Upstate New York, who had  
16      concerns about this, but even his testimony, his  
17      deposition was, Well, I thought maybe that had happened,  
18      but, you know, I didn't really have a way to prove it.  
19      I'm --

20           So there are suspicions, and there are a lot of  
21      suspicions in this industry. But as lawyers,  
22      your Honor, we can't make this stuff up. And we  
23      can't -- if it's not provable in some objective way,  
24      someone -- someone saying, Gee, you know, my PI count  
25      was high, and I don't really think it should have been

1       that high --

2                   THE COURT: I am not talking about in terms of  
3 falsification of data or misrepresenting the milk test  
4 results. I am talking about in terms of control, which  
5 was a theme in this case. And you talked to me about  
6 control of processors, and I pushed back and said, Well,  
7 what about these independent processors? And we talked  
8 about milk leaving the order and when it could happen  
9 and when it was not.

10          And I see this as an issue of control, is if the  
11 person who is determining what's going on with your milk  
12 is also the person who's paying you, they have got a lot  
13 of control.

14          MR. PIERSON: Your Honor, here's the problem,  
15 though, is that there was minimal evidence -- in this  
16 record of five million pages and probably a hundred -- a  
17 hundred-plus depositions in the two cases, there was  
18 minimal evidence -- and that may be overstating it --  
19 that that authority had ever been abused in any way.

20          And, you know, we can't -- believe me,  
21 your Honor -- and you see some of this in the various  
22 objector statements. There are so many suspicions and  
23 concerns about what DFA is doing, et cetera, et cetera,  
24 you know, we -- there's gotta be evidence to support  
25 them. There have gotta be facts to support them, or we

1       can't -- we can't tube a settlement because things that  
2       have limited -- limited, if any, support in the record  
3       aren't being addressed.

4           And, you know, ultimately, your Honor, you know,  
5       that question just goes to -- you know, a settlement's a  
6       compromise. I mean, are there other things that  
7       potentially could have been addressed? Yeah. I mean,  
8       there's always more you could do. There are always more  
9       criticisms. But there simply was not a factual basis in  
10      the record to push that issue hard, particularly on a  
11      class basis.

12          Your Honor, the other -- you know, when you asked  
13       the other thing -- when they say, Okay, well, what could  
14       you have done differently? What would we like to have  
15       seen you do differently? The other things that were  
16       mentioned was abolish DMS, which, you know, just as  
17       counsel for the DFA, DMS subclass, I mean, that's  
18       just -- was a non -- it was a nonstarter, relief we  
19       would never get. I don't think it was relief we could  
20       advocate.

21          There was discussion -- what has probably been  
22       maybe as important an issue as any to Mr. Haar is  
23       changing the way votes are tabulated and having --  
24       getting rid of block voting and doing voting by mail and  
25       having an independent person counting it. And, you

1 know, we tried to negotiate that issue.

2 We got what I would call modest relief on that  
3 point, in the sense that they agreed to look at it and  
4 implement changes if they concluded those were  
5 warranted. But there was no possibility that a jury  
6 trial would have resulted in that -- in that relief. So  
7 even going forward to trial wouldn't have gotten them  
8 that.

9 And the only other really specific thing that was  
10 mentioned is that they like board members to attend --  
11 to attend contract negotiations. There are 53 board  
12 members. The settlement provides that they gotta  
13 disclose -- they gotta disclose the contracts to the  
14 boards, and that's -- that's really sort of the only --  
15 I mean, I think it would -- A, it was not a material --  
16 it's really not a material change they were suggesting,  
17 and it was not a practical change, your Honor.

18 I do want to leave some time for Mr. Abrams to  
19 address -- to address points that I haven't addressed.  
20 I'm not sure I ticked off all the Court's questions.

21 THE COURT: I had -- doesn't matter to me  
22 which of you address it. I had concerns about the  
23 release.

24 MR. PIERSON: Yeah, let me say a couple things  
25 about the release too, and Mr. Abrams can make any other

1 comments he wants to about it.

2 Number one, this is the release that was used in  
3 the Southeast. It was approved by the court in the  
4 Southeast as fair, reasonable, and adequate. I  
5 understand that's not binding on you, but it is the same  
6 release that was used there. Mr. Abrams can talk about  
7 this. But I -- I don't believe anyone was objecting to  
8 it down there, nor do I believe that -- that anyone has  
9 said, subsequent to the settlement, that that release  
10 has caused problems for people. Maybe Mr. Abrams will  
11 know better than I too and he can tell you if I'm wrong.

12 Secondly, there were two -- the release language --  
13 you know, general release and also a release of sort of  
14 affiliated entities, that's pretty standard in  
15 settlements from my experience, and Mr. Kuney can speak  
16 to it directly, but, you know, the concern -- here's the  
17 concern with not releasing the affiliates, et cetera, et  
18 cetera, is that -- is that if we release the claims  
19 against DFA, DMS, what's to stop us --

20 I was just involved in another settlement -- in a  
21 mediation in which the defendant was raising exactly the  
22 same issues. What's to stop you the next day from going  
23 in the back door and suing their affiliated entities or  
24 their officers, et cetera, on exactly the same theory?  
25 So --

1                   THE COURT: I agree that officers, employees,  
2 agents may be covered. I am concerned that I wouldn't  
3 be able to tell you who's covered by this release. I  
4 would have some guesses on some of it, but I think -- I  
5 see a lot of releases, and I think this is a broad  
6 release.

7                   MR. PIERSON: Your Honor, what -- what I would  
8 suggest -- and, again, Mr. Abrams and Mr. Kuney will  
9 have their own -- their own perspectives on this, but it  
10 did seem to me that if the Court has concerns about  
11 particular provisions like that or particular language,  
12 they are curable problems. They are not a reason --  
13 they may be a reason to say, I need to see a different  
14 release from you. Can you guys -- this is my concern.  
15 Can you address this in language? but that's -- you  
16 know, rather than starting over, after five years and  
17 three months, I think that that would be the thing to  
18 do.

19                  So let me close with this comment, your Honor --  
20 with a couple comments. You know, one thing I have  
21 tried to really stay away from is -- as you can imagine,  
22 your Honor, it wasn't -- it wasn't easy to hear some of  
23 the perspectives that were expressed today. I have been  
24 an attorney for 30 years, you know. I came from a  
25 family -- my father was a teacher, a professor; my

1       mother was a minister. I came into this profession, and  
2       I ultimately moved to the plaintiffs' side, and I have  
3       been running the *pro bono* program at my firms for 10  
4       years. I came to it because of a really -- a really  
5       deep commitment to justice.

6           And there are two things that have defined my  
7       career, your Honor. One is integrity, and one is an  
8       intense dedication to the cases I worked on. And  
9       that -- that has not just been true of me. That's been  
10      true of all of my colleagues in this case. You know, we  
11      have fought like hell in this case for five years to do  
12      the right thing. And we brought exactly those --

13           I have no fear about going to trial. I got the  
14      biggest -- was part of the trial team that got the  
15      biggest verdict in the country two years ago. That was  
16      not an issue here. Fees were not an issue. We did what  
17      we thought was the right thing. We got -- we have  
18      gotten \$80 million for farmers in a case in which the  
19      damages -- the realistic damages, maximum, were not a  
20      whole lot above that, and the defendants were saying  
21      they were zero.

22           We dealt with a solicitation problem, which has  
23      been a major problem in this industry. We got equitable  
24      relief that no law enforcement agency in the United  
25      States has gotten in this industry, let alone in

1       Order 1, in the last decade. This is not a pretty good  
2       settlement. It's not a good settlement. It is an  
3       excellent settlement, your Honor, and I would request  
4       that you approve it.

5                     THE COURT: All right. Thank you.

6                     Mr. Abrams?

7                     MR. ABRAMS: Thank you, your Honor.

8                     May it please the Court. I am counsel for the  
9       non-DFA, DMS subclass. I would like -- I listened to  
10      all -- the best I could, to all of the objections and  
11      comments, positive comments made by the class members,  
12      and I think I heard most of what Mr. Pierson said.

13                  My effort was to take the comments of the class  
14      members and try to categorize them to be helpful in  
15      addressing them to your Honor. Hopefully I will do  
16      that. I also intend to try to address all of the points  
17      you raised earlier.

18                  Mr. Pierson started off with risks. I think that  
19      was appropriate. Any settlement has to take into  
20      account risks. Your Honor said in this case that the  
21      case is, quote, laden with risks. And your Honor was  
22      absolutely right. And we saw that. Actually, we saw  
23      that before we filed the case, and it's really cases.  
24      And I will tell you that in a minute. You heard me  
25      connected with the Southeast. Yes, I was the lead

1       counsel in the Southeast case.

2           The case -- the cases, because this is true for  
3       both the Southeast case and the Northeast case -- they  
4       were filed -- and when you file a plaintiff case, I  
5       learned -- because my whole career was with -- on behalf  
6       of defendants -- I learned when you file a plaintiff  
7       case -- because I was asked to do this case and I was  
8       asked to do one other case by my prior law firm, and I  
9       will get to that in a minute -- you often find --  
10      typically find that if you file a plaintiff class  
11      action, you are going to find 30 to 50 other law firms  
12      that file, and you end up in an MDL.

13           We filed these cases. There were a couple of  
14      firms, and I literally mean a couple of firms, that  
15      filed copycat cases in the Southeast, not 30 to 50. And  
16      that tells you what the plaintiff bar thought the risks  
17      were in proceeding with the case. And as soon as I was  
18      named lead counsel, they disappeared. Cohen Milstein  
19      was there.

20           And the same thing happened with the Northeast  
21      case. No copycat suits. You heard Mr. Pierson saying,  
22      and you probably heard at other times, that there were  
23      no government suits. Typically these class actions,  
24      there are government suits. You follow on the heels of  
25      that. There weren't any cases filed by any government

1 entity in connection with the milk business that we're  
2 talking about here.

3 Now, you heard from one of the Haars earlier about  
4 a whole record being created in the Southeast. I'm very  
5 familiar with what the government created in the  
6 Southeast. They took a lot of depositions. I read most  
7 of them. They didn't file a lawsuit. They did not  
8 create a record that we could rely on. We created the  
9 record that we could rely on.

10 And that's the same thing with respect to the  
11 Northeast. There's no easy case here. It's a very  
12 difficult case, which is why I said your Honor was  
13 right: It was laden with risks.

14 And cases develop differently. Your Honor has said  
15 over time that -- and I hope you don't mind me referring  
16 to your -- some prior orders because I --

17 THE COURT: I would hope I didn't mind. That  
18 would be kind of strange.

19 MR. ABRAMS: Your Honor said in your November  
20 25, 2014, order, at 5 and 6, that, Considering the  
21 strengths and weaknesses of the case, there's a, quote,  
22 legitimate risk of a defense verdict at trial.

23 I don't quarrel with any -- I don't say this to  
24 quarrel with what your Honor said. I say it because we  
25 have to take into account the risks. I am not saying

1       you're right. What I am saying is we have to take it  
2       into account, and we did.

3           You noted that the documentary proof of antitrust  
4       violations in some respects did not provide evidence of  
5       conspiracy. And you recognized the risks we have of  
6       proving any damages at trial.

7           Now, Mr. Pierson went through a damage number. I  
8       actually end up at the same number he ends up. I get  
9       there a little differently. And the difference is there  
10      is overlapping -- there are overlapping sales between  
11      the statute of limitations and the nonconspiring  
12      producers.

13           So you take that into account, and I increased the  
14      damages, but you get to somewhere between 130 and  
15      150 million dollars because you take off the 35 percent  
16      for the nonconspiring producers. If you were to listen  
17      to the defendants -- and in this instance I listened. I  
18      am not agreeing, but I am not listening -- and they say  
19      the statute of limitations eliminates another 35  
20      percent. Well, that's where I say there's some overlap  
21      there. But you end up with something like 130 to  
22      150 million dollars in single damages.

23           An \$80 million damage number -- settlement number  
24      that we get is more than half of that. And if you look  
25      at any of the cases, they would recognize that is an

1           excellent settlement.

2           I wanted to tell you a story, if I may -- it will  
3           take three minutes -- of the -- the real -- it really  
4           goes to the risk in this case and the risk we took.

5           I had a unique and unfortunate situation. But for  
6           a year clerking, I worked at the same law firm for 38  
7           years. That law firm was Howrey. That law firm  
8           dissolved in 2011.

9           I worked with a group of people at that firm.  
10          There were about 17 people that were part of cases I  
11          tried, the people I worked for for many, many years. I  
12          happened to be older than them, so I can't say -- but  
13          their whole careers were spent with me, and we wanted to  
14          go together to someplace. 17 people, it's a big group.

15          We talked to a lot of law firms in Washington, the  
16          best law firms in Washington. And I guess it's not so  
17          humble to say that we were welcomed at every one of  
18          those firms but one. But any number of those firms  
19          really questioned whether they wanted to take the milk  
20          cases. And we had two conditions -- I had two  
21          conditions. You take our group and you take the milk  
22          case, and if you don't want to, we'll shake hands and  
23          I'll go on.

24          That shows the risk -- it showed to me -- I knew it  
25          anyway, but it showed to me, and I say it to you,

1 because of the risk that's involved in this case. They  
2 had no idea what would happen to the case in the  
3 Southeast or the Northeast when we moved. Got a very  
4 good result in the Southeast. The law firm I went with  
5 is happy. So is the trustee in bankruptcy for Howrey.  
6 But firms were not just jumping on board to take on the  
7 milk cases. It's a risky case. Your Honor recognized  
8 it, and we recognized it, and we had to evaluate the  
9 settlement in the context of risk.

10 Your Honor was told about my knowledge of the  
11 Southeast case. I have some knowledge of it. I am sure  
12 I don't have as much as it was touted to be, but I have  
13 some knowledge of the Southeast case.

14 THE COURT: But you were lead counsel, right?

15 MR. ABRAMS: I was lead counsel.

16 THE COURT: So you have a lot of knowledge of  
17 that case.

18 MR. ABRAMS: I hope I have retained some of  
19 it.

20 I want to talk about the differences between the  
21 Southeast case and the Northeast case, because some  
22 people equate the two. In the Southeast case, there was  
23 a defendant called SMA. It was the marketing entity.  
24 It proclaimed its mission was to control all the milk  
25 marketed in the Southeast. And you know what? They

1       nearly accomplished their mission in terms of  
2       controlling the milk, because everything had to funnel  
3       through SMA. And that allowed defendants, by our  
4       allegations, to enact, monitor, and enforce suppressed  
5       prices.

6                  There's no comparable entity in the Northeast. The  
7       Northeast is a different market than the Southeast.  
8       It's a more fragmented market than the Southeast. And  
9       it will be more difficult to show the jury the effects  
10      of the actions of the defendants in the Northeast versus  
11      the Southeast.

12                 There's a difference in the markets between the  
13      Southeast and the Northeast, the markets themselves. In  
14      the Southeast, SMA had control over 88 percent of the  
15      raw milk. And in the Southeast, Dean and DFA had over  
16      60 percent of the milk processed. Here, defendants'  
17      market share, per Dr. Rausser, was estimated to be much  
18      less. DMS has between -- according to our and  
19      Dr. Rausser's analysis, between 40 and 58 percent of the  
20      raw milk marketed, and Dean and DFA had between 20 and  
21      25 percent of the milk processed. Excuse me. Those are  
22      very different markets.

23                 Oh, by the way, just to get -- you have been hit  
24      with a lot of numbers today. In the Southeast, there  
25      were 6,086 claims that were made on the settlement in

1       the Southeast. In the Northeast, I keep hearing about  
2       12,000 or 12,800 or those numbers. In the Northeast, in  
3       the Dean settlement, there were 7200 claims.

4           Okay. There are differences in the court orders  
5       between the Northeast and the Southeast, and those  
6       impact, obviously, any case. In the Southeast,  
7       defendants never even argued statute of limitations.  
8       There's a two-page motion *in limine*. There was never  
9       really any serious issue in the Southeast. Here, the  
10      Court found statute of limitations to be a major issue  
11      and a potential issue having significant impact on  
12      damages.

13           In the Southeast, the court didn't exclude any of  
14      Dr. Rausser's opinions. Here, the Court excluded  
15      aspects of opinions on relevant market and the damages  
16      model Dr. Rausser had.

17           In the Southeast, the court ruled that plaintiffs  
18      could admit damaging evidence of defendants' sweetheart  
19      deals. Here, the Court indicated evidence outside the  
20      statute of limitations may not be admissible. May not.  
21      I emphasize my recognition of the "may not."

22           Okay. I didn't mention the amount of damages  
23      claimed in the Southeast. We talked about it here, but  
24      in the Southeast it was \$415 million, if you want a  
25      comparison to the 130 to the 150.

1           Okay. The process for settlement has been raised  
2 here. What occurred? I was -- I negotiated -- I was  
3 the lead in negotiating the settlement in the Southeast,  
4 and I think it's fair to say I was the lead in the  
5 Northeast. I will tell you that settlement negotiations  
6 lasted in this case for years, literally years.

7           The Court ordered a mediation, you will remember,  
8 with Michael Marks. Indeed, the Haars attended that  
9 mediation. It got absolutely nowhere. No negative on  
10 Mr. Marks; it just didn't get anywhere. There was no  
11 offer of settlement.

12           In early 2013 -- and I am looking at my notes just  
13 to remember the chronology -- counsel for DFA and DMS  
14 and I talked some more. I am going to tell you that the  
15 class reps were absolutely informed of those  
16 discussions. They didn't go anywhere, and they were  
17 informed that they didn't go anywhere, but they were  
18 informed of those discussions and that they didn't go  
19 anywhere.

20           They resumed -- discussions resumed in 2014, and,  
21 again, there was no success. And, again, I will tell  
22 you, without any equivocation, the class reps were  
23 informed of those discussions.

24           May 2014, settlement was discussed again. We were  
25 so far apart, there was nothing to discuss. They ended.

1       The class representatives were told that.

2           Well, now it's June. You may remember that the  
3 final pretrial was June 23rd. I remember this clear- --  
4 one of the few things I remember clearly because I have  
5 a son who was getting married. He lives in Los Angeles,  
6 and there was a weekend party where we were going to  
7 meet the parents of the bride.

8           And I met with -- counsel for DFA, DMS called me,  
9 and I met with him on Wednesday. And he said, Well,  
10 it's really the end of the line. You know, do you think  
11 we could settle this case? And I will tell you -- I  
12 won't get into the specifics because I don't think  
13 that's right. If you ask me, I would answer you.

14           THE COURT: No, because settlement  
15 negotiations are not admissible. I am much more  
16 interested in what broke down between class counsel and  
17 class representatives because this is a very unusual  
18 situation.

19           MR. ABRAMS: Yes, but I will mention --

20           THE COURT: You can go through it your way. I  
21 don't need to know.

22           MR. ABRAMS: No, no. I am going to do it your  
23 way. I am going to try to.

24           I will tell you, because I think you asked this  
25 question, in the Southeast we had an objector -- a class

1 rep who objected to the settlement as well. I just tell  
2 you that.

3 But to answer this question with the breakdown --  
4 well, I can't tell you what's in the state of mind of  
5 some of the class reps, but I can tell you the events.

6 I told you we met on that Wednesday before the  
7 weekend. The offer was nothing. It was nothing. There  
8 was nothing to really say.

9 I got back -- I had to go to Greece for a client  
10 after this event for my son. I got back on Thursday. I  
11 had a text message from this person, Give me a call. I  
12 gave him a call. He said -- I won't go into what he  
13 said. But a substantial number was discussed by him,  
14 but never -- no commitment or anything. And I said, I  
15 can recommend to my clients a certain number. He didn't  
16 have that authority then. I said, But, you know, this  
17 is it because we are going to the final pretrial Monday.

18 On Friday I got a phone call agreeing to the number  
19 I said. And I had analyzed this case -- I mean, I had  
20 in my mind. I said that to him, but I also said, You  
21 remember from day one there have to be nonmonetary terms  
22 involved in this settlement, because I learned that in  
23 the Southeast how important they were, and I said it  
24 here.

25 So it ended up that I didn't negotiate with him on

1       the nonmonetary terms. Mr. Kuney and I negotiated on  
2       that. And on the day -- that Friday, that day, the  
3       class reps were called individually, because we couldn't  
4       get a group call that quickly. It was Friday that I  
5       learned that they would offer this number. And they  
6       were told of the number and that we had nonmonetary  
7       terms that had not been negotiated, and I was told that  
8       people were pretty happy.

9           On Monday, people weren't happy anymore. I don't  
10       know why. What I do know is that a statement was filed  
11       with this court talking about all of the group  
12       discussions -- and we reaffirm that in our affidavits --  
13       that occurred, and there were a lot of group discussions  
14       between us and the class reps. And there were a lot of  
15       issues raised.

16           And there were a lot of suggestions about  
17       nonmonetary terms, and I will tell you every one of  
18       those suggestions that we got was pursued -- I pursued  
19       it and others with me pursued it -- with DFA, counsel  
20       for DFA. And we got a lot. We didn't get everything.

21           Now, this is off track, but it's come up so often I  
22       will say it: I never heard about the milk testing being  
23       a part of this case until today. I understand  
24       your Honor's point about control. It makes sense. It  
25       was never an issue in this case. We haven't seen any

1 evidence regarding it.

2 And what I will tell your Honor, which is what  
3 every farmer has been told, "If there is any indication  
4 of retaliation for your involvement in this suit, you  
5 tell us because we wouldn't stand for it." You'd be  
6 told immediately -- well, you'd be told after I  
7 discussed it with opposing counsel. You'd be told.

8 And -- well, this is related to that. It's not  
9 exactly on point, although it gets there. You asked  
10 about certain provisions and what good is it if they're  
11 in the settlement agreement if they're illegal anyway.  
12 And I think you heard the response to that.

13 First of all, it's a whole lot easier coming to  
14 you, because you will have jurisdiction, and saying  
15 there's a violation, and you issue a show cause order,  
16 rather than have it be part, a very small part, of a  
17 major antitrust suit that you have to prove. They will  
18 have that as their right in the settlement agreement,  
19 and that is very significant.

20 In the example that was brought up were the audit  
21 documents in this context. Well, you know what? If --  
22 there are rights with the audit document. I don't  
23 remember them all right now. But there are rights there  
24 for that and other things in these nonmonetary terms.

25 And if they're not satisfied -- I am not talking

1       retaliation now, but if they are not satisfied, there  
2       are avenues to take. You could go to the Vermont  
3       Attorney General and talk about unfair trade practices.  
4       You can pursue an unfair trade practice, if it rises to  
5       that. There are avenues for relief.

6           And I should tell you, in the Southeast, there's  
7       some settlement provisions, and we don't think Dean  
8       complied with a certain requirement, and we don't think  
9       SMA complied with a certain requirement, and we have  
10      filed motions before Judge Greer, and they're pending  
11      before Judge Greer, to pursue those in that case. And  
12      the same thing would be done here.

13           Oh, public disclosure of the record and the request  
14      that, you know, Why don't they just open up the whole  
15      record? Well, I sort of have learned this: You know,  
16      if you want to bury something, you bury it in five  
17      million pages of documents. I would much rather -- and  
18      indeed what happens is you cull those documents, as I am  
19      sure your Honor knows, to find the right documents.

20           We found the right documents for this case, like we  
21      do for cases, and what is being opened and available in  
22      conjunction with our -- our briefing -- there are 545  
23      exhibits. The plaintiffs' certification briefs include  
24      153 exhibits. And these exhibits mean deposition  
25      experts, deposition exhibits, expert report examples,

1       the whole gamut of what is in the case.

2           Defendants' certification brief has 48 exhibits.

3           Our summary judgment brief has 282 exhibits. And I know  
4           there are problems with all this in another context, but  
5           in this context, the availability of these records,  
6           culled as they are, is significant. And our summary  
7           judgment -- or defendants' summary judgment brief has 62  
8           exhibits. Those are the key documents in a case.

9           And, you know, if you have a trial exhibit list,  
10          and it's thousands of exhibits, well, you have them  
11          there to make sure, but you know that you are really  
12          talking 50 to a hundred documents that are the key  
13          documents in a case. These are the key documents. They  
14          are available. And they're available, frankly, in a way  
15          that makes more sense than opening up a  
16          five-million-document case record.

17           Okay. You asked a question about division between  
18          the class reps and class counsel. I was asked by --  
19          Mr. Sitts opposes the settlement. He and his son both  
20          talked. They oppose the settlement. They're our  
21          clients. He asked me if I would be available to try  
22          this case, if it had to be tried, and I said absolutely.

23           I am representing the class I represent zealously.  
24          That is my job. And I will do my job. And if you say  
25          we go to trial, we will go to trial. I am here telling

1       you this is an excellent settlement, but whatever you  
2 decide, I am here to do it.

3           You asked about the release, and I guess I -- I --  
4 I don't -- I am not looking at it correctly, because  
5 when I look at the release, it releases claims related  
6 to the facts and circumstances alleged in the complaint.

7           THE COURT: Well, it says, "includes any and  
8 all claims, regardless of their nature, from January 1,  
9 1994, through and including the effective date, arising  
10 out of, associated with, related to the facts or  
11 circumstances alleged in the complaint, including but  
12 not limited to settling defendants' sale and marketing  
13 of raw Grade A milk or their purchase of or failure or  
14 refusal to purchase raw Grade A milk that was produced  
15 in and pooled on Federal Milk Order 1.

16           "Release claims include all claims that were  
17 asserted or could have been asserted, arising out of or  
18 relating in any way to any conduct alleged in the  
19 complaint" -- which is all the pleadings in this case --  
20 "regardless of whether those claims arise from common  
21 law theories, tort or contract, including without  
22 limited" -- "limitation, breach of contract, breach of  
23 fiduciary duty or theories under federal, state, or  
24 other statutory law, rule, or regulation."

25           And then we have a very broad definition of the

1       people who benefit from the release. So that looks very  
2 broad to me. And as I say, I see a lot of releases, and  
3 I just had one in a wage-and-hour case in which the  
4 persons were getting \$50, a hundred dollars in their  
5 settlement, and they were releasing all claims related  
6 to their employment. And actually that's not  
7 permissible, so we sent it back, and they fixed the  
8 release.

9           So I didn't need anybody to point to me concerns  
10 about the release. I raised them with you. And I  
11 raised it the first time I saw it, and I raised it in  
12 the notice to the class members. It's a lot broader  
13 than that notice is saying.

14           MR. ABRAMS: I -- I am not trying to quarrel  
15 with you, but I will just tell you how I look at it.

16           THE COURT: Okay.

17           MR. ABRAMS: The "including but not limited  
18 to" is a subset. It's a defendant way of writing,  
19 frankly. But it's all related to the facts and  
20 circumstances alleged in the complaint, in the amended  
21 complaint. That's where your -- what you are releasing.

22           And when I look at that, that's -- yes, is it  
23 written in a broad way, but it's not different than --  
24 you are always releasing what you allege in a complaint.  
25 That's the nature of the settlement. And that's how I

1       read this release provision.

2                     THE COURT: How about "including but not  
3                     limited to anything" --

4                     MR. ABRAMS: I'm sorry.

5                     THE COURT: Sorry. "Including but not limited  
6                     to anything about the sale of raw Grade A milk"? What  
7                     wouldn't that cover that they are doing?

8                     MR. ABRAMS: Like we didn't allege in the  
9                     complaint these tests regarding raw Grade A milk.  
10                    That's not what is -- it's not a fact or circumstance  
11                    alleged in the complaint. I don't think it's part of  
12                    this case.

13                    THE COURT: Well, what about "including but  
14                     not limited to settling defendants' sale and marketing  
15                     of raw Grade A milk or their purchase of or failure or  
16                     refusal to purchase" --

17                    MR. ABRAMS: I'm sorry, Judge. I can't hear  
18                    you.

19                    THE COURT: I know. I have a low-pitched  
20                    voice that's very hard to hear, and sometimes that's a  
21                    blessing.

22                    MR. ABRAMS: It's me. I --

23                    THE COURT: That's okay. So let's -- one  
24                    thing I want to do is -- it's 10 of 5:00, and I want to  
25                    make sure that we hear from the defendant. So I say

1       it's broad; you think it's not broad. Let's move on to  
2 anything else you wanted to say to me before I turn to  
3 defendants?

4                   MR. ABRAMS: When I heard that we were better  
5 off going to trial and losing, I shook my head. I don't  
6 agree with that. I don't agree with that from all the  
7 positives you get from the settlement, and I do think  
8 there are substantial positives, both monetary and  
9 nonmonetary. But I think there are substantial  
10 negatives you get from going to trial and losing, which  
11 is ratifying everything that the plaintiffs are talking  
12 about here. I am not interested in that.

13                  I am interested -- if I go to trial, I want to win.  
14 And so when I hear that, it's telling me that people  
15 aren't looking at it the same way I am, in a very  
16 significant way, which is what one, I think, should do  
17 in analyzing whether a settlement makes sense.

18                  I know you -- I should sit down.

19                  THE COURT: If you have a short thing you want  
20 to say, that's fine, but I am going to turn to the  
21 defendants.

22                  MR. ABRAMS: Yeah. No. And I -- I can't say  
23 I want them to be heard, but I want this hearing to --  
24 oh, can I just say one other thing?

25                  THE COURT: Sure. Yes.

1                   MR. ABRAMS: Put this here. I heard about  
2 the -- I'm sorry? I heard about the notice point, and  
3 people didn't get -- you didn't hear all the objections  
4 you would have heard if everybody got the notice, or  
5 some comment like that from some people who were  
6 objecting.

7                   Well, the fact is that, in addition to the formal  
8 notice that went out, there's a publication called  
9 Farmshine which purports to go to 75 percent of the  
10 farmers in the Order. And there was an article on  
11 producers urging opposition to DFA, DMS settlement,  
12 which was the result of a letter from three of the class  
13 reps who also reached out to GCR, GLOBAL Competition  
14 Review, and provided the statement that had been  
15 submitted to the Court *in camera*.

16                  So I think that there was substantial word out  
17 there about this settlement, and of course there's the  
18 notice, which is that's the main point of the notice.  
19 So I think what you heard today is -- you heard from  
20 three class reps opposing the settlement. You heard  
21 from a class rep in favor of the settlement. And you  
22 heard from others in favor of the settlement.

23                  I do believe all the issues were raised before  
24 your Honor. They were -- really covered the issues, but  
25 I don't see that there's large opposition to this

1 settlement from the class.

2 With that, I will sit down. Thank you.

3 THE COURT: Thank you.

4 Let's hear from the defendants.

5 MR. KUNEY: Thank you, your Honor. This could  
6 possibly be one of the briefest times I'm up here.

7 THE COURT: I was thinking you usually get a  
8 lot of time, so --

9 MR. KUNEY: No, I know, and it's probably --  
10 it's probably poetic justice of the sort that I don't  
11 and probably suits the event that we are here for today  
12 anyway, where --

13 THE COURT: And this is Mr. Kuney.

14 MR. KUNEY: I think we have a lot left to  
15 say -- a lot less to say, frankly, than the people you  
16 have already heard from.

17 Let me, with some trepidation, step into the issue  
18 of the interpretation of the release. I actually -- I  
19 agree with Mr. Abrams that if one forced oneself to try  
20 to diagram the sentence, the operative language  
21 is "arising out of or related to the facts and  
22 circumstances alleged in the complaint," and that  
23 whatever follows has to be a piece of that.

24 THE COURT: "Arising out of or relating to,  
25 associated with" --

1 MR. KUNYE Yeah.

2 THE COURT: -- and you got a complaint  
3 that's -- you know, what is it, a hundred or more  
4 paragraphs?

5 MR. KUNYE: The complaint is a long and  
6 complicated complaint. I don't deny that, but -- but  
7 that's -- that's what's being released --

8 THE COURT: All right.

9 MR. KUNYE: -- is things that --

10 THE COURT: And testing of milk is -- say we  
11 will take that -- is associated with, related to the  
12 allegations in the complaint.

13 MR. KUNYE: There were -- there were, at some  
14 point in the case -- and I confess I don't remember  
15 whether it's in the language of the complaint -- one or  
16 two -- my memory is it came up in the context of the  
17 statute of limitations, what events had occurred within  
18 four years of the filing of the complaint.

19 And what we heard in response was a couple of  
20 anecdotes, not dissimilar from some of the things that  
21 you heard in court today.

22 THE COURT: So the way it came up was you were  
23 challenging Dr. Rausser's motives of people to  
24 participate in a conspiracy, and we started hearing  
25 about threats and retaliation, and I heard just a tiny

1           sliver --

2                   MR. KUNYEY: Right.

3                   THE COURT: -- of meddling with milk  
4 results --

5                   MR. KUNYEY: Right, and we --

6                   THE COURT: -- and that's it.

7                   MR. KUNYEY: I think we addressed that in our  
8 summary judgment and suggested that really none of those  
9 episodes was there admissible evidence that could  
10 corroborate the episode. I don't think -- you didn't  
11 reach that point in your summary judgment ruling, but we  
12 felt comfortable that it was largely uncorroborated  
13 hearsay, which in many cases the witnesses, during their  
14 depositions, essentially undid at least half the story  
15 on their own.

16                  So when Mr. Pierson says there's really not an  
17 evidentiary record to make that part of the settlement  
18 process, I think that's absolutely right. It's not that  
19 it came up never. It's that it did come up, and it  
20 didn't have sufficient substance to warrant becoming a  
21 significant piece of the case or, candidly, a part of  
22 the settlement discussions.

23                  But let me -- let me just say one thing about the  
24 settlement --

25                   THE COURT: So let me just say that it caught

1       my attention today and not because you needed to have  
2       Farmer 1 show that a split-second before the truck  
3       arrived he had a chemist there analyzing and came up  
4       with this butterfat and this protein, and then two  
5       seconds later the truck driver's got a completely  
6       different test.

7           I found it interesting in terms of control because,  
8       frankly, prior to today -- and I am hearing Mr. Abrams  
9       heard it for the first time today -- I didn't realize  
10      that DFA and DMS did all the testing of the milk and  
11      that there was no verification process from a third  
12      party, and that's how they calculated the milk check.  
13      And I could see a lot of control inherent in that.

14           I am not saying that would have been a different  
15      case, but it's surprising to me to hear it for the first  
16      time from the class representatives.

17           MR. KUNEY: Well, I guess, I think the class  
18      counsel have given their explanation, which, from what I  
19      saw and the evidence that came through discovery, I  
20      would have to agree with them, that there -- that there  
21      was another side to that story, which is candid- --  
22      frankly, when we explain what the cooperative does and  
23      one of -- the services it brings to the members,  
24      concentrating the testing was an enormous efficiency  
25      that we thought saved people hundreds, thousands of

1       dollars across the scope of the region.

2           Rather than being -- rather than being an element  
3       of coercion and control, we thought it was an important  
4       efficiency that returned more money to dairy farmers.  
5       And if testing had been more of an issue in the case,  
6       that would have been what you would have heard from us,  
7       that it's not abused and that, rather, it's a benefit.

8           But it appeared to us from where -- from the side  
9       of the room we sit on that there were a few isolated  
10      events that, frankly, didn't amount to a case that could  
11      be pursued, particularly not on a class basis. It  
12      wouldn't be a -- a couple of anecdotes here and there.

13           So, yes, I understand the point that it sounds like  
14      there's a gatekeeper and, gosh, they're testing your  
15      milk, but someone has to test your milk. The fact that  
16      the samples are sort of -- the product is perishable,  
17      and you can't necessarily argue about it, would be true  
18      no matter who's doing it.

19           We -- your Honor, we totally get the idea that  
20      there's some people there that don't trust us. I mean,  
21      we understand that. Happily, we -- a few people came to  
22      court today from a different perspective. It's not  
23      simply silence. You heard some people that have made  
24      multiple choices in their lifetime, in their careers,  
25      to -- to operate through DFA and DMS. Not everyone out

1       there thinks that this is some evil that, remarkably  
2       enough, I thought was compared to things that had  
3       happened during World War II, which took for sort of a  
4       jarring comment, even in a long day of interesting and  
5       important comments.

6           But, yes, I take your point. It sounds like there  
7       is a structure that, in the wrong hands, could be  
8       abused. I would say to you it's a structure that was  
9       put in place to accomplish efficiencies and did so, and  
10      there's no record of that abuse in the course of a case  
11      where the discovery was exhaustive, the depositions were  
12      endless, and the people who had those stories, they were  
13      not corroborated through the deposition process.

14           THE COURT: So I don't want to go -- and I  
15      don't want to waste your time too much on this issue.  
16      If you will recall, it came up in the issue of explain  
17      your theory of the case to me in a way that I could  
18      understand --

19           MR. KUNEY: Right.

20           THE COURT: -- relate to a law clerk, relate  
21      to a jury. And -- and that has actually been a theme  
22      with which you have tried to persuade me to dismiss the  
23      case or carve it up --

24           MR. KUNEY: That's true.

25           THE COURT: -- or not let it go to trial.

1                   MR. KUNYEY: That's true.

2                   THE COURT: So that's how it came up. It's  
3                   not we don't need to go down and investigate a new  
4                   claim, but it resonated with me.

5                   MR. KUNYEY: I think it's clear -- I take that  
6                   point. It may be clearer and simpler to explain than  
7                   some of the more complicated conspiracy theories that  
8                   you heard. I think what you are hearing from both the  
9                   plaintiffs' side and my side of the case is that there  
10                  was not a factual record -- it's simpler to  
11                  articulate -- but that there's not a factual basis that  
12                  would have supported it, that made them feel comfortable  
13                  in pursuing it.

14                  And, frankly, we weren't surprised at that, because  
15                  this was not an issue -- there's lots of -- lots of  
16                  complaints, lots of lore that resonates in the dairy  
17                  business, and this is not something that had been a  
18                  problem that was being brought to the cooperative's  
19                  attention as something that was some kind of systemic  
20                  situation that would require --

21                  THE COURT: So do you deny it was a request in  
22                  the injunctive relief? Do you deny there was no issue  
23                  about independent testing, and people didn't say that  
24                  was really important to them?

25                  MR. KUNYEY: Let me tell you what I remember.

1       And Mr. Abrams, I think, was clear about the fact that I  
2       was only involved in the discussions about the conduct  
3       remedies and not -- I was not -- I was occasionally a  
4       participant but not the primary point of contact in the  
5       discussion about the financial terms.

6           So that he and I made contact after I was informed,  
7       much to my surprise, that there seemed to be a number  
8       that the parties had agreed upon. I thought I might  
9       simplify the process by sending him a proposal for  
10      injunctive relief that went to what I understood to be  
11      the primary elements of the complaint, which was the  
12      solicitation issue and the antitrust compliance, because  
13      those topics had come up repeatedly, and I thought,  
14      well, look, maybe we can do this quickly.

15           Mr. Abrams, early the following week, sent me a  
16      very lengthy proposal, which he told me had come from  
17      his consultations with the class representatives and  
18      that -- and putting a whole list of new items on the  
19      table, which I had not anticipated would be part of the  
20      discussion, and I understood them, again, from his  
21      representations, to be coming from his clients.

22           I have -- I have not checked my file, but I have no  
23      recollection of our ever discussing this testing issue  
24      as part of the conversation that included the proposals  
25      that had come from the class members. I didn't look.

1       It didn't occur to me to sort of go back and check and  
2       see what I have.

3           I can -- I would have said what I said to you five  
4       minutes ago, which is, that's not part of this case. We  
5       are here to resolve -- the resolution needs to be linked  
6       to the case. And that is -- that has been a nonissue  
7       throughout the case, and I am not sure why we are  
8       talking about it today.

9           What we -- frankly, that's the couple of  
10       provisions in here which, instead of imposing relief,  
11       suggest that the Northeast Area Council will take it up,  
12       were other areas where we felt it was far afield, we'd  
13       never heard complaints about it, it had not been an  
14       issue in the case, we didn't think the dairy farmers  
15       wanted it, so we said, We have got an idea. Let them --  
16       if you want us to guarantee that they will have a  
17       process and think about it, we will do that.

18           But I have no -- I have no memory that this testing  
19       was an item that we talked about at all. And if it was,  
20       it must have been 30 seconds or less.

21           And so we worked off of his paper, which had come  
22       from his consultations with his class representatives.  
23       We didn't agree to everything. We had a negotiation.  
24       And we came up with the injunctive relief that you see  
25       here, which I also agree with Mr. Pierson's observation

1       that any question about the term of the agreement, the  
2       length of the agreement, I think it is clear, goes to  
3       December 31st of 2016, but some of the provisions,  
4       including the nonsolicitation agreement, do not have a  
5       sunset provision, do not have an end point.

6           And I was going to mention, but Mr. Abrams already  
7       did, that since the wonders of ECF filing, I see these  
8       motions being filed in the Southeast case for  
9       enforcement of the settlement. I am pleased to report  
10      no such motion has been filed against DFA. There's been  
11      no criticism that we haven't adhered to the terms, and  
12      the other settling parties they have pursued, where they  
13      felt that they have not followed their obligations under  
14      the settlement, and I have every reason to expect they  
15      would vigorously do that here. That's been their track  
16      record, and that's how they have comported themselves.

17           So -- so we had -- I can't tell you more,  
18       obviously, about the interactions between him and his  
19       clients, Mr. Abrams and his clients. I can only tell  
20       you that what I was presented with, and was somewhat  
21       taken aback by, was the lengthy list of proposals that  
22       he explained as having come from his consultation with  
23       them. And then we proceeded to negotiate and to strike  
24       a middle ground in terms of ones that we would accept  
25       and ones that, frankly, seemed to us to be too far

1 afield and unrelated to the case or more intrusive in  
2 ways that perhaps they didn't understand.

3 I don't -- I think -- I think that's it,  
4 your Honor, unless there's something else that's come up  
5 today that you think we can speak to, I'm happy to, but  
6 otherwise, that's really all I was going to try to put  
7 in front of the Court.

8 THE COURT: All right.

9 MR. KUNEY: Thank you very much.

10 THE COURT: All right. It is past 5:00, and I  
11 feel especially sorry for our court reporter.

12 Thank you. You have given me lots to think about.  
13 I will take the matter under advisement. I will get you  
14 a written order.

15 And anything further before we close for the day?

16 MR. PIERSON: No, your Honor.

17 MR. KUNEY: Not from us, your Honor.

18 THE COURT: Thank you.

19 (Court was in recess at 5:08 p.m.)

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21 C E R T I F I C A T I O N

22 I certify that the foregoing is a correct  
23 transcript from the record of proceedings in the  
24 above-entitled matter

25 March 2, 2015  
Date

Anne Nichols Pierce